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Coastal Florida Police Benevolent Assn. v. Phillip B. Williams

MR. CHIEF JUSTICE: GOOD MORNING, AND WELCOME TO THE WEDNESDAY ORAL ARGUMENT CALENDAR OF THE FLORIDA SUPREME COURT. WE ARE GLAD THAT YOU ARE HERE TO WITNESS THE ARGUMENTS IN THESE CASES. WE WELCOME, AS A GROUP, THE WILLIAM DANDY MIDDLE SCHOOL GROUP AND THEIR TEACHER, MR. JIM SLATER. WE ARE ESPECIALLY WELCOMING YOU FROM FT. LAUDERDALE AND, ALSO, FROM THE LEADERSHIP 21 GROUP, FROM THE WINTER HAVEN CHAMBER OF COMMERCE. WELCOME. WE ARE CERTAINLY HAPPY TO HAVE YOU HERE FROM IMPERIAL POLK COUNTY. SO OUR FIRST CASE THIS MORNING IS THE COASTAL FLORIDA POLICE BENEVOLENT ASSOCIATION VERSUS WILLIAMS. MR. JOHNSON.

GOOD MORNING. MY NAME IS HAL JOHNSON, AND I REPRESENT THE PETITIONER IN THIS CASE, COASTAL FLORIDA POLICE BENEVOLENT ASSOCIATION. THE CASE BEFORE YOU, TODAY, ACTUALLY BEGINS WITH YOUR DECISION IN THE CASE OF SERVICE EMPLOYEES INTERNATIONAL UNION VERSUS PERC, A DECISION WHICH WAS RENDERED IN JAN EAR OF LAST YEAR. -- IN JANUARY OF LAST YEAR. AS A RESULT OF THAT DECISION, THE COASTAL FLORIDA POLICE BENEVOLENT ASSOCIATION BEGAN TO IMMEDIATELY ORGANIZE THE DEPUTY SHERIFFS IN THE BREVARD COUNTY -- AT BREVARD COUNTY. AFTER THEY HAD COLLECTED A SUFFICIENT SHOWING OF INTREST, THEY FILED A REPRESENTATION PETITION WITH THE PUBLIC EMPLOYEES RELATIONS COMMISSION, SEEKING TO BECOME THE CERTIFIED BARGAINING AGENT FOR THE DEPUTY SHERIFFS. WHEN THE COMMISSION AGREED TO ACCEPT JURISDICTION OF THE CASE, SHERIFF WILLIAMS FILED A PETITION FOR A WRIT OF PROHIBITION IN THE FIFTH DISTRICT COURT OF APPEAL.

IN TERMS OF THE BARGAINING UNION, WERE THERE, IN ADDITION TO DEPUTY SHERIFFS, OTHER INDIVIDUALS, SUCH AS I AM JUST LOOKING AT YOUR BRIEF, FIELD TRAINING OFFICERS, CORPORALS AND SARGE SNENTS.

RIGHT.

I WANT TO UNDERSTAND, IS THE ISSUE ABOUT ALL OF THOSE INDIVIDUALS OR ONLY THE INDIVIDUALS THAT ARE IN THE POSITION OF DEPUTY SHERIFF?

NO. ACTUALLY THE BARGAINING UNIT ENCOMPASSED THE CLASSIFICATIONS OF DEPUTY SHERIFF, CORPORAL, UP TO SERGEANT. SERGEANT IS THE HIGHEST RANK THAT WE WERE SEEKING TO HAVE INCLUDED IN THE BARGAINING UNIT.

BUT IS IT ONLY DEPUTY SHERIFFS AT ISSUE OR ALL THE FIELD TRAINING OFFICER, CORPORALS, SERGEANT?

I AM SURE SHERIFF WILLIAMS WILL TELL YOU THAT, SINCE THEY ARE ALL DEPUTY SHERIFFS, THEY WILL ALL BE ENCOMPASSED BY HIS PETITION FOR WRIT OF PROHIBITION, THAT THE JOB TITLE THEY HOLD, FOR EXAMPLE SERGEANT VERSUS CORPORAL, IS NOT OF SIGNIFICANCE IN THEIR PETITION, BECAUSE THESE INDIVIDUALS ARE DEPUTY SHERIFFS, APPOINTED BY SHERIFF WILLIAMS.

THEY ARE ALL DEPUTY SHERIFFS.

THEY ARE ALL DEPUTY SHERIFFS.

OKAY. HUM.

ARE THERE PEOPLE WHO ARE ACTUALLY LAW ENFORCEMENT OFFICERS THERE, WHO ARE NOT DESIGNATED DEPUTY SHERIFFS?

WELL, I WOULD ASSUME, AND I CERTAINLY CAN'T SPEAK FOR THE SHERIFF, BUT I ASSUME EVERYONE IS A DEPUTY SHERIFF, AND THEN THEY ARE GIVEN A, FOR WANT OF A BETTER TERM, A MILITARY GRADE OF EITHER DEPUTY, CORPORAL, SERGEANT, AND THEN THERE ARE SOME HIGHER-RANKING OFFICERS THAT THE PBA DID NOT SEEK TO REPRESENT.

CAN YOU DRAW A DISTINCTION IN YOUR OWN MIND, BETWEEN DEPUTY CLERKS AND DEPUTY SHERIFFS, AND IF SO, WHAT WOULD BE THE DISTINCTION?

YOUR HONOR, I CANNOT DRAW A DISTINCTION. I HAVE STUDIED THE SEIU CASE. I HAVE STUDIED THE COURT'S RATIONALE IN LANGUAGE. I HAVE LOOKED AT THE FACTS, AND I WOULD HAVE TO TELL YOU THAT, IN MY OPINION, THAT WOULD GIVE US TO THE SUBSTANCE OF OUR ARGUMENT. THE DECISION THAT YOU ISSUED, IN THE SERVICE EMPLOYEES CASE AND IN THE ATTORNEY GILLS CASE, LEADS US TO ONE RESULT, AND THE CONCLUSION THAT THERE IS NO REASONABLE DISTINCTION FOR DENYING THE DEPUTY SHERIFFS, AS OPPOSED TO ANY OTHER CONSTITUTIONAL OFFICERS, SHERIFFS, THE RIGHT TO COLLECTIVELY BARGAIN.

DO YOU SEE THAT AS BEING THE KEY TO THIS CASE, WHETHER THAT DISTINCTION CAN BE DRAWN OR NOT, IN LIGHT OF THE TWO OPINIONS?

IN LIGHT OF THE TWO OPINIONS, YES. THEY WOULD HAVE TO -- I WOULD -- MY POSITION WOULD BE THAT THEY WOULD HAVE TO BE ABLE TO PERSUADE THIS COURT THAT THERE IS SOME REASONABLE, ACTUALLY IN MY OPINION, SOME COMPELLING STATE INTEREST, TO SUPPORT A DISTINCTION WHICH WOULD, IN ONE INSTANCE, GRANT THE DEPUTIES OF EVERY OTHER CONSTITUTIONAL OFFICER THE RIGHT TO COLLECTIVELY BARGAIN, AND IN THIS INSTANCE, DENY THE DEPUTY SHERIFFS THE RIGHT TO COLLECTIVELY BARGAIN.

IS THE DISTINCTION BETWEEN -- IS IT JUST BETWEEN DEPUTY CLERKS AND DEPUTY SHERIFFS, OR DO YOU, ALSO, MAKE THE DISTINCTION THAT EVERY OTHER CERTIFIED LAW ENFORCEMENT OFFICER IN FLORIDA, SUCH AS POLICE OFFICERS, STATEN ENFORCEMENT OFFICERS, ARE ALL -- STATEN FORCEMENT OFFICERS, ARE ALL -- STATE ENFORCEMENT OFFICERS, ARE ALL ENTITLED TO THE RIGHT TO COLLECTIVELY BARGAIN. DEPUTY SHERIFFS ARE THE ONLY OFFICERS THAT CAN'T COLLECTIVELY BARGAIN?

THAT IS THE FACT, AND IN FACT IN BROWARD COUNTY, ESCAMBIA COUNTY AND NOW IN FLAGLER COUNTY, WE NOW HAVE THE ADDITIONAL, I GUESS, ABILITY TO POINT TO THE FACT THAT THERE ARE, IN FACT, DEPUTIES OF CONSTITUTIONAL OFFICERS WHO ARE, IN FACT, RIGHT NOW BARGAINING, WITHOUT ANY INTERFERENCE, WITH THE SHERIFF'S ABILITY TO RUN HIS DAY-TO-DAY OPERATIONS AND FUNCTION AS A CONSTITUTIONAL SHERIFF. AND IT IS BASICALLY OUR POSITION IS THERE IS NO, NOT EVEN -- WE DON'T PERCEIVE THAT IS THERE A RATIONAL BASIS, BUT I DON'T THINK THAT IS THE APPROPRIATE TEST. I THINK THE APPROPRIATE TEST IS THERE A COMPELLING STATE INTEREST TO TAKE THIS GROUP OF LAW ENFORCEMENT OFFICERS, THESE DEPUTIES, AND SAY, BECAUSE YOU WEAR A GREEN UNIFORM, AND BECAUSE, FOR EXAMPLE, HERE IN TALLAHASSEE, YOU PERFORM MOST OF YOUR SERVICES OUTSIDE THE CITY LIMITS, AND BECAUSE YOU WORK FOR A SHERIFF, YOU DON'T HAVE THE ECONOMIC RIGHT THAT IS GUARANTEED BY THE FLORIDA CONSTITUTION, TO ALL PUBLIC WORKERS, THAT ARE ENJOYED BY THE POLICE OFFICERS, THE STATE TROOPER, THE SPECIAL AGENTS, AND AT LEAST IN THREE COUNTIES, DEPUTY SHERIFFS.

DO YOU CONCEDE THAT THE LEGISLATURE HAS APPARENTLY EXPRESSED A POLICY OF NOT TREATING DEPUTY SHERIFFS AS PUBLIC EMPLOYEES, FOR PURPOSES OF COLLECTIVE

BARGAINING?

I THINK THE FAIR RESPONSE TO THAT IS I BELIEVE THE LEGISLATURE HAS TREATED THEM IN A MIXED MANNER. AND LET ME CLARIFY THAT. IF YOU WILL LOOK AT THE VARIOUS LAWS THAT CERTAINLY THE SHERIFF, SHERIFF WILLIAMS SITES, AND -- SITES -- CITES, AND THEN IF YOU LOOK AT THE LAWS THAT WE CITE, I THINK IT IS DISTINCTIVELY A MIXED BAG. WE HAVE, FOR EXAMPLE, THREE LOCAL LAWS THAT SAY, SPECIFICALLY, DEPUTY SHERIFFS ARE PUBLIC EMPLOYEES. CERTAINLY WE HAVE AN ENTIRE SERIES OF CAREER SERVICE LAWS THAT DRAW A DISTINCTION BETWEEN YOUR MANAGERIAL DEPUTY SHERIFFS AND YOUR REGULAR DEPUTIES. WHAT I WILL CONCEDE TO YOU IS THIS. IT APPEARS, TO ME, THAT, ON A REGULAR BASIS, WHEN THESE TYPES OF ISSUES COME UP, THAT THERE IS A POLITICAL GIVE AND TAKE BY THE LEGISLATURE, IN SOME CASES WHERE THE ASSOCIATION, SUCH AS OUR ASSOCIATION, HAS, FOR WANT OF A BETTER TERM, POLITICAL CLOUT OR POLITICAL STRENGTH, THEN WE HAVE BEEN SUCCESSFUL IN GETTING THE LEGISLATURE TO SAY DEPUTY SHERIFFS ARE PUBLIC EMPLOYEES. BY THE SAME TOKEN, IN CERTAIN INSTANCES, WHERE THE SHERIFFS ASSOCIATION HAS BEEN SUCCESSFUL AND WHERE SOME RIGHTS ARE BEING GRANTED, FOR EXAMPLE INCLUSION OF THE DEPUTY SHERIFFS, UNDER THE LAW ENFORCEMENT OFFICERS' BILL OF RIGHTS, THE LEGISLATURE HAS STUCK IN LANGUAGE THAT SAYS, BUT DON'T CONSTRUE THIS AS GRANTING THEM THE RIGHT TO COLLECTIVELY BARGAIN. MY CONCERN IS THIS. LET'S NOT LOSE SIGHT. WE ARE DEALING WITH A FUNDAMENTAL CONSTITUTIONAL RIGHT, LIKE THE FREEDOM OF SPEECH, THE RIGHT TO PRIVACY, THE FREEDOM OF ASSOCIATION. THIS SHOULD NOT BE A POLITICAL PING-PONG BALL, WHERE BECAUSE OF ONE GROUP'S POLITICAL STRENGTHS OR POLITICAL WEAKNESSES, WE BAT THE BALL BACK AND FORTH, AS TO OKAY, IN THIS LAW YOU WIN. IN THIS STATUTE YOU LOSE. THIS IS A CONSTITUTIONAL RIGHT. AND ALL MY READING OF CONSTITUTIONAL LAW, AND I WILL REFER YOU, I THINK YOU HAVE A QUOTE THAT I USE QUITE REGULARLY IN THE ARMSTRONG VERSUS HARRIS CASE, IS THE LEGISLATURE, THE PEOPLE -- I MEAN THE PEOPLE PUT INTO THE LAW, INTO THE CONSTITUTION, CERTAIN BASIC PRINCIPLES, AND THE REASON THEY PUT IT IN THE CONSTITUTION, AS OPPOSED TO THE STATUTES, IS THEY WANTED TO MAKE SURE THAT IT IS NOT INTERFERED WITH, THAT IT DOESN'T BECOME THE POLITICAL PING-PONG BALL THAT WE SEE, IN SOME OF THESE LAWS THAT HAVE DEVELOPED.

ARE YOU -- YOU ARE CONCEDED, AND THERE IS NO QUESTION THAT WHAT WE HAVE TO DO WOULD BE TO RECEDE FROM THE MURPHY DECISION.

YES. I DON'T THINK THERE IS ANY QUESTION THAT THAT HAS TO OCCUR.

WHAT HAS CHANGED, SINCE THAT TIME, TO MANDATE OR REQUIRE OR COMPEL US TO RECEDE? THE CONSTITUTION -- THE CONSTITUTIONAL PROVISION THAT YOU ARE REFERRING TO CHANGED OR HASN'T SINCE THAT TIME?

I THINK THE EASY RESPONSE TO THAT IS WHAT WE HAVE, IN THE SERVICE EMPLOYEES CASE, IS THE FIRST TIME THIS COURT HAS AUTHORITATIVELY CONSTRUED THE MEANING OF "EMPLOYEE", IN THE CONTEXT OF CONSTITUTIONAL RIGHT TO COLLECTIVELY BARGAIN.

WHY DO YOU THINK WE DID NOT SPECIFICALLY OVERRULE MURPHY, IF THAT IS WHAT WE INTENDED TO DO, TO REINTERPRET THE DEFINITION OF PUBLIC EMPLOYEE?

I --

WE HAD THAT OPPORTUNITY. IT WAS RIGHT THERE BEFORE US.

BUT I DON'T THINK THE SPECIFIC ISSUE WAS THERE BEFORE YOU, AND I THINK THAT, IF I WAS BEING CAUTIOUS, I WOULD WANT TO AFFORD THE SHERIFFS AN OPPORTUNITY TO COME FORWARD AND SHOW US WHY THIS LAW OR WHY THIS DISTINCTION MAKES ANY SENSE. BUT IF YOU COMPARE THE FEIU DECISION AND YOU READ THAT, IT STARTS OUT BY SAYING THE RIGHT

TO BARGAIN IS AFFORDED TO EVERY PUBLIC WORKER. IT DOESN'T SAY EMPLOYEE. IT SAYS THIS IS A RIGHT AFFORDED TO EVERY PUBLIC WORKER, AND THEN THE COURT GOES ON, TO SET UP A BRIGHT-LINE TEST, AND THAT TEST, IN THAT STANDARD, IS BASED ON THE CONSTITUTION. IF YOU LOOK AT THE MURPHY CASE, WHEN YOU GET MURPHY VERSUS MARC, DOES NOT ONCE MENTION - - VERSUS MACK, DOES NOT ONCE MENTION THE CONSTITUTIONAL RIGHT TO COLLECTIVELY BARGAIN. IT DOESN'T CITE ARTICLE I SECTION 6 IN ANY MANNER. AS A MATTER OF FACT THE COURT, AS A MATTER OF STATUTORY INTERPRETATION, REACHES THE DECISION THAT, EVEN THOUGH THEY MAY HAVE DEPUTIES MAY HAVE, SOME ELEMENTS OF AN EMPLOYEE, WE ARE NOT GOING TO EXTEND THIS CONSTITUTIONAL RIGHT TO THEM. WE ARE GOING TO CARVE OUT AN EXCLUSION.

SO THE ANSWER IS THAT, REALLY, NOTHING HAS CHANGED SINCE THAT TIME OF THAT DECISION. YOUR POSITION IS JUST THAT IT WAS WRONGLY DECIDED, BECAUSE THE FRAMEWORK FOR THE DECISION HAD, THE STARTING POINT HAD TO BE THE CONSTITUTIONAL PROVISION, AND THE ANALYSIS HAD TO -- SHOULD HAVE BEEN ONE OF COMPELLING STATE INTERESTS, FOR EXCLUDING DEPUTY SHERE SNIFFS.

NO. AND I DIDN'T MEAN TO LEAVE YOU WITH THAT EMIMPRESSION. QUITE A BIT HAS CHANGED ACTUALLY F YOU LOOK AT THE EVOLUTION, THE MURPHY VERSUS MACK DECISION WAS RENDERED IN 1978. THE RIGHT TO COLLECTIVELY BARGAIN WAS A NEW LAW AND JUST BEING IMPLEMENTED, BUT IF YOU LOOK AT HOW THE LAW HAS EVOLVED SINCE THEN, THE ENTIRE LANDSCAPE OF COLLECTIVE BARGAINING HAS CHANGED. POLICE OFFICERS, NOW, NEGOTIATE. LAW ENFORCEMENT OFFICERS NOW -- I MEAN OTHER LAW ENFORCEMENT OFFICERS NEGOTIATE. SPECIAL AGENTS NEGOTIATE. DEPUTIES NEGOTIATE NOW! SO FACTUALLY, YOU HAVE THIS WHOLE BODY OF CHANGE THERE, AND THE LAW, ITSELF, HAS CHANGED. IN 1981, THIS COURT, FOR THE FIRST TIME, BEGAN TO PRESS FORWARD WITH THE CONCEPT THAT THIS IS A FUNDAMENTAL CONSTITUTIONAL RIGHT THAT CANNOT BE AND RIGID OR INTERFERED WITH. THAT BEGINS WITH THE CITY OF TALLAHASSEE CASE. IT MOVES TO 1988, THIS COURT COMES OUT WITH THE DECISION OF HILLSBOROUGH COUNTY GOVERNMENTAL EMPLOYEES ASSOCIATION, WHERE THEY SPECIFICALLY SAY THIS IS A FUNDAMENTAL RIGHT, AND IT IS PROTECTED UNDER A COMPELLING STATE INTEREST STANDARD. WE MOVE TO THE, UNFORTUNATELY, THE STATE VERSUS FLORIDA PBA CASE, BUT, AGAIN, THE COURT TIGHTENS UP THAT STANDARD AND SAYS THIS IS A RIGHT ENJOYED BY EVERYBODY, AND THEN WE HAVE THE CASES OF THE ATTORNEYS GUILD CASE AND FINALLY, I BELIEVE THE BEST CASE IS THE SERVICE EMPLOYEES CASE, WHERE THIS COURT DEALS SPECIFICALLY FOR THE FIRST TIME, IN HOW ARE WE GOING TO DEFINE THIS TERM "EMPLOYEE", AND WHAT THE COURT SAID IS VERY SIMPLY THIS. IF YOU ARE A WORKER AND AN EMPLOYEE IN THE ORDINARY SENSE OF THE WORD, AND THIS IS THE FIRST TIME THE COURT GRAPPLES WITH EMPLOYEES AND THE DEFINITION, UNDER ARTICLE I SECTION 6. IF YOU ARE A WORKER, THIS IS A RIGHT THAT THE PEOPLE HAVE DECIDED TO GIVE YOU. IF YOU ARE A WORKER OR A PUBLIC WORKER, WE WANT THE LEGISLATURE AND EVERYBODY ELSE TO KNOW, OUT THERE, WE ARE GOING TO HAVE A BRIGHT-LINE TEST. THIS IS THE TEST. IF YOU ARE AN EMPLOYEE, IN THE ORDINARY SENSE OF THE WORD, THEN YOU HAVE THIS ECONOMIC RIGHT, AND THAT IS SIMPLY THE RIGHT, IF YOU SO DESIRE, AND IF YOUR FELLOW EMPLOYEES OR FELLOW WORKERS SO DESIRE, IS TO SELECT A REPRESENTATIVE AND SIT DOWN AND BARGAIN WITH AN EMPLOYER OVER YOUR TERMS AND CONDITIONS, UNDER WHICH YOU ARE WORK! IT IS A VERY SIMPLE RIGHT. IT IS NOT COMPLICATED. BUT IT IS A BASIC FUNDAMENTAL RIGHT, AND IT IS JOINED BY EVERYBODY, BUT THE SEIU IS THE FIRST TIME THE COURT JUST TAKES THE EMPLOYEE ISSUE AND DEALS WITH IT IN A VERY SYSTEMATIC MANNER. AND WHAT THEY DO IS, QUITE HONESTLY, THEY GO THROUGH THE ENTIRE ANALYSIS, WHERE THE BASIS OF THE MURPHY VERSUS MACK, AND THEY ESSENTIALLY DISCREDIT. MURPHY VERSUS MACK. DEPUTY SHERIFFS ARE THE ALTER EGO OF SHERT I HAVE. THE COURT LOOKS AT THAT EXTENSIVE -- EGO OF THE SHERIFF. THE COURT LOOKS AT THAT EXTENSIVELY, AND WHAT DO THEY SAY? THE JARGON "ALTER EGO EMPLOYEE".

YOU ARE IN YOUR REBUTTAL.

I WOULD CLOSE WITH THIS. IT IS OUR POSITION THAT MURPHY VERSUS MACK COULD NOT SURVIVE, BEING PUT UP AND COMPARED AGAINST SERVICE EMPLOYEES UNION. THAT DECISION WAS CORRECTLY DECIDED, AND IT SHOULD BE FOLLOWED BY THIS COURT, AND THE COURT SHOULD FIND THAT THAT DECISION OVERRULES MURPHY VERSUS Mac, AND THAT FINALLY, AFTER -- VERSUS MACK, AND THAT FINALLY, AFTER 22 YEARS OR 23 YEARS, DEPUTY SHERIFFS HAVE THAT RIGHT TO BARGAIN. THEY HAVE THAT SAME ECONOMIC RIGHT AS EVERY OTHER FLORIDA PUBLIC WORKER.

WHY COULD WE NOT INTERPRET, THOUGH, THE SERVICE DECISION AS BEING A STATEMENT THAT WE WILL NOT, AT THIS TIME, EXTEND THE CONCEPT OF DEPTTIZEING THOSE WITHIN A STRUCTURE, BEYOND THE SHERIFF STRUCTURE, WHICH IS RECOGNIZED AT COMMON LAW? WHY WOULD THAT NOT BE A PROPER READING OF "SERVICE"? WE ARE NOT EXTENDING IT ANY FURTHER.

THEN, I GERTION THE REJOINDER TO THAT IS -- THEN, I GUESS, THE REJOINDER TO THAT IS IF YOU RECOGNIZE THAT DEPUTIES OF CONSTITUTIONAL OFFICERS HAVE THE RIGHT, THIS FUNDAMENTAL RIGHT TO COLLECTIVELY BARGAIN, HOW DO YOU DRAW THAT DISTINCTION BY SAYING BECAUSE THE THEORY OF THE DEPUTIES OF CONSTITUTIONAL OFFICERS, UNDER COMMON LAW, IF IT HAS ANY APPLICATION HERE, AND I WOULD SUBMIT TO YOU THAT OBVIOUSLY THE RIGHT TO COLLECTIVELY BARGAIN IS A MODERN CONCEPT, BUT THE THEORY, IF WE ARE GOING BACK TO COMMON LAW, THE DEPUTY OF THE CLERK OF THE COURT WAS IN THE SAME POSTURE AS THE DEPUTY OF THE SHERIFF. THE DEPUTY OF THE TAX COLLECTOR WAS IN THE PROPERTY. IN YOUR DECISION, YOU RECOGNIZE THAT ESSENTIALLY A DEPUTY IS A DEPUTY, AND WHAT I AM SAYING TO YOU IS WHAT IS THE COMPELLING STATE INTEREST. HOW COULD YOU DRAW THAT LINE AND SAY, WELL, YOU KNOW, WE HAVE GOT THIS DECISION OUT THERE, AND WE REALLY DON'T WANT TO OVERTURN IT, SO WE ARE GOING TO EXCLUDE YOU FROM THE VERY FUNDAMENTAL BASIC RIGHT OF YOUR ABILITY TO BARGAIN WITH YOUR EMPLOYER. THERE IS SIMPLY NO BASIS TO DO THAT, AND I THINK THAT, IF ONE READS THE SERVICE EMPLOYEES CASE, ONE HAS TO CONCLUDE THAT THAT DECISION, IN FACT, EFFECTIVELY OVERRULES MURPHY VERSUS MACK, BECAUSE THERE IS NO LONGER ANY BASIS, IF YOU APPLY THE BRIGHT-LINE TEST, FOR MAKING THAT DISTINCTION. I DON'T THINK THE COMMON LAW HAS ANY PLACE HERE. I THINK THE ECONOMIC, THE MODERN DAY ECONOMIC RIGHTS ENJOYED BY PUBLIC WORKERS IN FLORIDA, INURES TO AND CERTAINLY ENCOMPASSES DEPUTY SHERIFFS. THEY HAVE THE SAME RIGHTS AS SHERIFFS TO DETERMINE WHAT THEIR EARNINGS WILL BE AND WHAT THEIR EMPLOYMENT STATUS WILL BE. THANK YOU.

MR. GRIMES.

MAY IT PLEASE THE COURT. I AM STEPHEN GRIMES, REPRESENTING SHERIFF WILLIAMS. AT THE OUTSET, LET ME RESPOND TO YOUR INITIAL QUESTION, JUSTICE PARIENTE. ALL OF THE LAW ENFORCEMENT OFFICERS OF SHERIFF WILLIAMS ARE DEPUTIES, AND THEY ARE THE ONES AT ISSUE. HE HAS OTHER EMPLOYEES, CLERKS, RADIO OPERATORS, SUCH AS THAT THAT WOULD NOT BE DEPUTIES, AND, OF COURSE, CONSISTENT WITH THE MURPHY DECISION, THEY WOULD BE SUBJECT FOR COLLECTIVE BARGAINING, IF THEY PETITION FOR IT AND THAT SORT OF THING. COUNSEL SAID THAT THIS CASE BEGINS WITH SERVICE EMPLOYEES. I HAVE TO SUGGEST THAT NO MATTER HOW YOU SLICE IT, THE ISSUE IN THIS CASE IS WHETHER THE COURT IS GOING TO OVERRULE ABOUT FIFTH YEARS OF FLORIDA JURISPRUDENCE. IN 1968, THE CONSTITUTION WAS AMENDED TO PROVIDE FOR PUBLIC EMPLOYEE BARGAINING. OF COURSE, AS THIS COURT HAD SAID, IN JENKINS V STATE, THE CONSTITUTIONAL AMENDMENT MUST BE CONSTRUED, IN LIGHT OF THE HISTORICAL DEVELOPMENT OF THE DECISIONAL LAW, EXTENT AT THE TIME OF THE ADOPTION OF THE CONSTITUTION. WELL, MANY YEARS BEFORE, IN THE BRORINE CASE, THIS COURT HAD HELD THAT DEPUTY SHERIFFS, BECAUSE OF THEIR UNIQUE HISTORICAL PERSPECTIVE, WERE APPOINTED OFFICERS AND NOT EMPLOYEES, FOR PURPOSE OF CIVIL SERVICE. THEN AND THEREFORE, THE DRAFTERS, NECESSARILY, KNEW THAT THAT DISTINCTION, IN FACT, A TELLING

POINT IS THAT, OVER IN ARTICLE III, SECTION 14 OF THE SAME CONSTITUTION, THEY PROVIDED THAT YOU COULD AUTHORIZE, THAT THE LEGISLATURE COULD AUTHORIZE CIVIL SERVICE FOR EMPLOYEES AND OFFICERS NOT APPOINTED BY THE GOVERNOR, SO THEY KNEW -- THE DRAFTERS KNEW HOW TO USE THAT TERM AND MAKE THE DISTINCTION BETWEEN EMPLOYEES AND EMPLOYEE -- AND WITH DEPUTIES. IN THE CASE OF DEPUTIES, WOULD BE OFFICERS APPOINTED, NOT APPOINTED BY THE GOVERNOR, WHICH GOES BACK TO THE HISTORIC POSITION OF DEPUTY SHERIFFS. THEN, OF COURSE, SO THE MURPHY CASE, WHEN IT CAME ALONG SEVERAL YEARS LATER, IT WAS LOGICAL FOR THE JUSTICES IN THE MURPHY CASE TO RECOGNIZE THAT AND HOLD THAT THE TERM "PUBLIC EMPLOYEES" DOESN'T SAY WORKERS T.S --. IT SAYS PUBLIC EMPLOYEES IN THE CONSTITUTION. HISTORICALLY DID NOT INCLUDE APPOINTED OFFICERS, i.e. DEPUTY SHERIFFS. AND A COUPLE OF YEARS LATER, THE ISEN CASE CAME ALONG, AND THIS IS A CASE IN WHICH THERE WAS LEGISLATION TO PUT SOME DEPUTIES UNDER CIVIL SERVICE, AND THE COURT REAFFIRMED MURPHY AND SAID, WELL, THEY ARE NOT EMPLOYEES, BUT ARTICLE III SECTION 14, WHICH TALKS ABOUT CIVIL SERVICE, SAYS YOU CAN PUT EMPLOYEES AND OFFICERS NOT APPOINTED BY THE GOVERNOR, UNDER CIVIL SERVICE, AND THEREFORE WE HOLD AND UPHOLD THE STATUTE THAT ALLOWS THE DEPUTIES TO GO UNDER CIVIL SERVICE, VERY CONSISTENT WITH MURPHY AND WITH THE CONSTITUTIONAL AMENDMENT. SINCE MURPHY, THERE HAS BEEN ABOUT EIGHT DECISIONS.

WHAT IS YOUR RESPONSE TO YOUR OPPONENT'S ARGUMENT THAT THE MURPHY CASE, REALLY, DOESN'T CONFRONT BS FRONTALLY, THE CON --, FRONTAL I, THE CONSTITUTIONAL CHANGE IN -- FRONTALLY, THE CONSTITUTIONAL CHANGE IN '68. IT DEALS WITH THE ISSUE OF THE STATUTE BUT NOT THE ISSUES OF THE CONSTITUTION.

WELL, HE IS NOT MAKING A -- HE IS NOT MAKING AN EQUAL PROTECTION ARGUMENT HERE. THE MURPHY CASE HAD TO DECIDE WHETHER -- THEY HAD A PERC STATUTE THAT USED THE TERM PUBLIC EMPLOYEE, LIKE THE CONSTITUTION, AND THE MURPHY CASE HAD TO DECIDE WHETHER PUBLIC EMPLOYEE INCLUDED AN APPOINTED OFFICER, AND THEY HELD THAT THE TERM, WHETHER IT WAS IN THE CONSTITUTION, THEY WERE ACTUALLY CONSTRUING THE STATUTE, BUT WHETHER IT WAS THE SAME TERM. IT SIMPLY IS PUBLIC EMPLOYEE DID NOT INCLUDE APPOINTED OFFICER.

BUT WHAT I HEAR YOUR OPPONENT SAYING IS THAT, IN MURPHY, THIS COURT DIDN'T CONFRONT, DIRECTLY, THE CHANGE TO THE CONSTITUTION IN 1968. HAVING TO DO WITH THE RIGHT OF ALL STATE EMPLOYEES TO COME WITHIN THE BARGAINING PROVISIONS. AND THAT THE MURPHY DIDN'T, REALLY, CONFRONT THAT ISSUE, AS THIS COURT CONFRONTED THAT ISSUE, IN THE SERVICE EMPLOYEES CASE, HAVING TO DO WITH DEPUTY CLERKS.

NO. I BEG TO DISAGREE WITH YOU. IN SERVICE EMPLOYEES, THIS COURT WAS CONSTRUING THE STATUTE. IT WASN'T CONSTRUING THE CONSTITUTION. IT SAID, IN FACT, IT STARTED OUT, IT SAYS THE -- OUR DECISION IN THIS CASE, THE POLLSTAR OF OUR DECISION IS LEGISLATIVE INTENT, AND IT WAS INTERPRETING THE TERM "PUBLIC EMPLOYEE", IN THE STATUTE, AND AS IT RELATED TO DEPUTY CLERKS, AND DISTINGUISHED A DEPUTY CLERK FROM DEPUTY SHERIFFS, AND, OF COURSE, DEPUTY SHERIFFS HAVE ALWAYS, HISTORICALLY, HAD AN UNIQUE POSITION HERE, FROM -- WE ARE NOT TALKING ABOUT DEPUTY TAX ASSESSORS, DEPUTIES, ANYBODY ELSE. WE ARE TALKING ABOUT DEPUTY SHERIFFS, WHICH HAVE HAD THIS HISTORIC DISTINCTION.

LET ME ASK YOU, ARE YOU -- IS IT YOUR POSITION, THEN, THAT, IN FACT, THERE WAS NEVER AND IS NEVER HAS BEEN A CONSTITUTIONAL RIGHT, THROUGH THE 1968 AMENDMENT, AFFORDED TO DEPUTY SHERIFFS. IS THAT --

YES.

SO THAT THERE FOR THE ANALYSIS --

THEY ARE NOT EVEN IN THERE. THAT'S RIGHT.

THAT IS YOUR POSITION, THAT WE, FIRST, WOULD HAVE TO CONSTRUE THE CONSTITUTIONAL PROVISION TO SAY THAT THEY WERE INTENDED OR NOT INTENDED TO BE INCLUDED, WITHIN THE CONSTITUTIONAL PROVISION THAT IS AFFORDED TO ALL OTHER EMPLOYEES IN THE STATE OF FLORIDA.

YES. YOU WOULD HAVE TO DO THAT, AND YOU WOULD, ALSO, HAVE TO OVERRULE MURPHY.

WELL, THAT I UNDERSTAND.

YEAH. YEAH. YEAH.

BUT THE IDEA THAT WE WOULD HAVE TO FIND A COMPELLING STATE INTEREST, IN ORDER TO EXCLUDE DEPUTY SHERIFFS, YOU ARE SAYING THAT IS THE WRONG PREMISE, TO START WITH.

THAT IS BESIDE THE POINT, BECAUSE THEY ARE NOT IN THERE IN THE FIRST PLACE.

AND THEREFORE THE QUESTION IS, THEN, AND YOU ARE SAYING NOBODY IS RAISING -- THERE IS NOT AN EQUAL PROTECTION ARGUMENT, BECAUSE WE ARE TALKING ABOUT SOMETHING THAT HAS ALREADY BEEN IN THE CONSTITUTION.

THAT'S RIGHT. THAT'S RIGHT. AND IN FACT, THEIR RELIANCE ON THE CHILD'S CASE WHERE WE ARE TALKING ABOUT THE ATTORNEYS THAT WORK FOR THE ATTORNEY GENERAL, AND THOSE PEOPLE WERE ADMITTEDLY EMPLOYEES, AND YOU HAD -- AND THEY COULDN'T SHOW A COMPELLING STATE INTEREST TO TAKE THEM OUT. THE LEGISLATURE WAS TRYING TO TAKE THEM OUT. DEPUTIES ARE NOT IN THE CONSTITUTIONAL PROVISION, TO START WITH.

AND YOU ARE SAYING THE REASON FOR THAT IS BASED ON WHAT THE CASE LAW WAS AT THE TIME THAT THE CONSTITUTIONAL AMENDMENT WAS PASSED?

RIGHT. PLUS THE MURPHY INTERPRETATION --

CAN YOU TELL ME WHETHER THERE IS ANY REAL REASON, IN THE YEAR 2001, UNDERSTANDING, FOR ACCEPTING OUT DEPUTY SHERIFFS FROM ALL OTHER TYPES OF LAW ENFORCEMENT OFFICERS, IN THE STATE OF FLORIDA? I MEAN, YOU DO CONCEDE THAT POLICE OFFICERS CAN COLLECTIVELY BARGAIN. STATE TROOPERS, SPECIAL AGENTS, I GUESS, JUST ABOUT EVERYONE ELSE BUT DEPUTY SHERIFFS.

YEAH. CERTAINLY, YOU KNOW, IN MANY RESPECTS, THE DUTIES OVERLAP IN MANY WAYS. THERE ARE SOME SUBSTANTIAL DISTINCTIONS, HOWEVER. THERE IS A WHOLE CHAPTER 30 DEALS SPECIFICALLY WITH THE SHERIFFS AND THE DEPUTY SHERIFFS AND WHAT THEY CAN DO AND WHAT THEY CAN'T DO AND THE RELATIONSHIP WITH EACH OTHER. DEPUTIES AND THE SHERIFFS, OF COURSE, HAVE JURISDICTION OVER THE WHOLE COUNTY, AND DEPUTIES HAVE JURISDICTION OVER THE WHOLE COUNTY, AS WELL AS INSIDE THE CITIES AND WITHOUT.

HOW WOULD THAT INFLUENCE WHETHER THEY SHOULD OR SHOULDN'T HAVE A RIGHT TO BE ABLE -- SHOULDN'T HAVE A RIGHT TO BE ABLE TO COLLECTIVELY --

I AM TRYING TO POINT OUT SOME DISTINCTIONS.

AS IT RELATES TO COLLECTIVE BARGAINING.

YEAH. SURE. THE DEPUTIES, POLICE, CITY POLICE, CAN'T SERVE PROCESS OR ARREST WARRANTS. THE -- OF COURSE A LOT OF IT IS BASED ON THE HISTORICAL DISTINCTION AND THE ALTER EGO

THEORY OF THE SHERIFFS BEING DIRECTLY RESPONSIBLE FOR THE ACTS OF THE DEPUTY, WHEREAS THE -- IF A POLICEMAN DOES SOMETHING WRONG, THE POLICE CHIEF JUST -- IT IS GOING TO BE THE CITY COMMISSION, THE LAYERS OF AUTHORITY, THE POLICE CHIEF IS NOT GOING TO BE THE AUTHORITY RESPONSIBLE FOR THE DEPUTY. THE -- BUT ESSENTIALLY THERE IS A DISTINCTION, AN EQUAL PROTECTION ARGUMENT WAS MADE IN THE SIKES CASE IN FEDERAL COURT, AND THE FEDERAL COURT REJECTED THE EQUAL PROTECTION AND FOUND THAT THE FACT THAT THERE WAS A MEANINGFUL DISTINCTION BETWEEN DEPUTIES AND POLICE OFFICERS. THAT WAS SPECIFICALLY ARGUED. ALSO THERE IS A CASE IN THE FIRST DISTRICT COURT OF APPEALS THAT ANOTHER BREVARD SHERIFF'S CASE THAT CAME TO THE SAME CONCLUSION, THAT THERE WAS A DISTINCTION, AND EQUAL PROTECTION WOULDN'T FLY.

WHAT LANGUAGE, IN ARTICLE I SECTION 6, DO YOU MAINTAIN EXCLUDES DEPUTY SHERIFFS?

IT -- THE LANGUAGE IS SIMPLY "PUBLIC EMPLOYEES".

THE "PUBLIC EMPLOYEES" LANGUAGE TALKS ABOUT NOT BEING ABLE TO STRIKE, BUT THE OTHER LANGUAGE JUST SIMPLY SAYS THE RIGHT OF EMPLOYEES, DOES IT NOT?

EMPLOYEES. YEAH. DEPUTY SHERIFFS ARE APPOINTED OFFICERS. HISTORICALLY, ALL OF THE CASE LAW MAKES THE DISTINCT THAT THEY ARE APPOINTED OFFICERS, AS DISTINGUISHED FROM EMPLOYEES.

AND WHAT -- IN TODAY'S WORLD, WHAT DO YOU DO TO APPOINT SOMEONE, AS OPPOSED TO HIRING THEM?

YOU SWEAR THEM IN, AMONG OTHER THINGS. YOU GIVE THEM AN OATH. YOU DON'T DO THAT WHEN YOU HIRE THEM. I DON'T KNOW HOW MUCH THAT -- THAT IS CERTAINLY A DISTINCTION. THEY ARE APPOINTED. YOU KNOW, NOW, I AM NOT SUGGESTING, AND YOU UNDERSTAND THE MURPHY CASE ALLOWED NONDEPUTY SHERIFFS TO -- AND RECOGNIZED THEY SHOULD BE SUBJECT TO COLLECTIVE BARGAINING. THE SERVICES EMPLOYEES CASE WAS CORRECTLY DECIDED. WE ARE NOT FLAUNTING WITH THE HOLDING OF THAT, BECAUSE THAT INVOLVED THE DEPUTY CLERKS DID THE SAME KIND OF WORK THAT THE SHERIFFS CLERKS AND SECRETARIES AND WHATEVER DID, WHICH THE MURPHY CASE HELD WERE COLLECTIVE BARGAINING, BUT THE DEPUTY SHERIFFS HAVE THE UNIQUE DISTINCTION, AS PUBLIC EMPLOYEES. YOU KNOW, THERE HADN'T BEEN ANY CHANGE FROM MURPHY WAS DECIDED IN '78. THERE WERE BIG SHERIFFS OFFICES IN 1978. THERE HADN'T BEEN ANY CHANGE UPON WHICH TO SAY THAT MURPHY WAS WRONG, TO SOMEHOW, NOW, CONSTRUE THE CONSTITUTION AS SAYING, WHICH USES THE TERM EMPLOYEE AND MURPHY WAS -- MURPHY WAS, ALSO, CONSTRUING THE TERM "EMPLOYEE", BECAUSE THAT WAS IN THE PUBLIC -- THAT WAS IN THE PERC LAW, STATUTE.

I DIDN'T REALLY HEAR YOUR ANSWER TO JUSTICE WELLS'S EARLIER QUESTION, AND THAT IS TO SAY THAT MURPHY DID NOT TAKE ON THE CONSTITUTIONAL PROVISION THAT WE ARE TALKING ABOUT, THAT IT WAS A CASE --

IT DID NOT --

-- STATUTORY CONSTRUCTION. IT WASN'T A CASE OF CONSTITUTIONAL INTERPRETATION, WAS IT?

I THINK THE EFFECT OF MURPHY WAS TO CONSTRUE THE LANGUAGE OF THE CONSTITUTION, IF FOR NO OTHER REASON, THAT THE TERM "EMPLOYEE" WAS THE SAME TERM THAT WAS USED IN THE CONSTITUTION. EMPLOYEE. AND THEY CONSTRUED "EMPLOYEE" NOT TO INCLUDE APPOINTED OFFICERS.

THE MURPHY CASE DID NOT INVOLVE AN ANALYSIS OF THE CONSTITUTIONAL PROVISION GRANTING COLLECTIVE BARGAINING RIGHTS, DID IT?

I THINK THAT IS CORRECT. I DON'T HAVE IT RIGHT IN FRONT OF ME. THEY TALKED ABOUT THE CONSTITUTION, AND IT SEEMS TO ME THAT THE EFFECT OF MURPHY WAS WHETHER THEY SPOKE OF IT OR NOT, WOULD NECESSARILY WAS CONSTRUING THAT LANGUAGE.

IT WAS CONSTRUING STATUTORY LANGUAGE, WAS IT NOT?

RIGHT. YEAH. YEAH.

OKAY. GO A LITTLE BIT FURTHER AND SAY, ASSUMING THAT WE DO FIND THAT DEPUTY SHERIFFS ARE INCLUDED AS EMPLOYEES IN THE CONSTITUTIONAL PROVISION, THEN WHAT IS YOUR POSITION, AS FAR AS THE INTEREST OF THE STATE, IN EXCLUDING THEM FROM COLLECTIVE BARGAINING RIGHTS?

YOU KNOW, THERE ARE MEANINGFUL DISTINCTIONS, I SUBMIT, THAT MAKE A DIFFERENCE. SOME OF THEM HISTORICAL, SOME OF THEM PRACTICAL, BUT YOU KNOW, I CAN UNDERSTAND -- I THINK THAT, IF YOU SOMEHOW REACH THE CONCLUSION AND OVERRULE ALL THESE DECISIONS, WHICH I SUBMIT YOU WOULD HAVE TO DO, THEN WE PROBABLY WOULD HAVE A DIFFICULT TIME, TO SAY THAT THERE WAS A COMPELLING STATE INTEREST TO TAKE THEM BACK OUT.

I APPRECIATE THAT CANDOR.

YOU KNOW. WE SUBMIT CLEARLY THEY ARE NOT, AND FURTHERMORE, COUNSEL ARGUES, WELL, YOU KNOW, THE LEGISLATURE, BY SPECIAL LAW, HAS AUTHORIZED SOME COUNTIES AND SOME SHERIFFS TO HAVE COLLECTIVE BARGAINING. THAT IS FINE. WE DON'T -- WE CERTAINLY DON'T SAY THE LEGISLATURE CANNOT DO IT. INCIDENTALLY, IT IS PRETTY SIGNIFICANT. WHEN THEY OFFERED THIS LAST ONE THAT HE SUBMITTED AS A SUPPLEMENTAL AUTHORITY FOR THE COUNTY, THAT THEY AUTHORIZED BY SPECIAL LAW, TO HAVE COLLECTIVE BARGAINING, THE WAY THEY DID IT IS THAT WE AUTHORIZE EMPLOYEES AND APPOINTED OFFICERS TO HAVE COLLECTIVE BARGAINING! THE LEGISLATURE KNEW THE DISTINCTION BETWEEN APPOINTED OFFICERS AND THEREFORE THEY TOOK, THEY BROUGHT IN SHERIFFS. THAT IS HOW THEY BROUGHT IN CIVIL SERVICE PEOPLE. VERY PROPERLY. SO WE DON'T SAY THE LEGISLATURE CAN'T DO IT, AND THAT IS -- IF THEY WANT, BUT CLEARLY THE LEGISLATURE DOESN'T WANT TO DO IT, BECAUSE EVERY TIME THEY PASS A LAW, A GENERAL LAW, LIKE THE POLICE OFFICERS BILL OF RIGHTS AND THE ANTI-DISCRIMINATION RETALIATION ACT, THEY SAY BUT THIS SHOULD NOT BE CONSTRUED TO INCLUDE PUBLIC APPOINTED OFFICERS.

WHAT IS THE DISTINCTION FOR TREATING DEPUTY SHERIFFS IN ONE COUNTY TO HAVE COLLECTIVE BARGAINING RIGHTS AND DEPUTY SHERIFFS IN ANOTHER COUNTY NOT TO HAVE COLLECTIVE BARGAINING RIGHTS?

IT IS A LEGISLATIVE DETERMINATION. THE LAW IS --

THERE DOESN'T HAVE TO BE ANY REASON.

THE LEGISLATURE DOES LOTS OF THINGS. THEY MAY BELIEVE THEY HAVE A REASON. THE LEGISLATURE DOES IT. BUT THE POINT IS, IT IS THE LEGISLATIVE DETERMINATION WHETHER OR NOT TO DO IT, AND IT IS NOT, JUST BECAUSE WE DON'T THINK THAT MAKES A LOT OF SENSE, IT IS NOT THE POINT.

BUT YOU ARE NOT CLAIMING THAT THERE IS ANY VALID REASON.

WHAT, FOR THE LEGISLATURE TO DO IT?

TO TREAT DEPUTY SHERIFFS IN THE COUNTY --

I THINK THERE IS A VALID REASON TO DO IT, BECAUSE THE LAW REQUIRES IT. I CAN'T TELL YOU WHY THE LEGISLATURE, IN A GIVEN CASE, ALLOWS ONE COUNTY TO DO IT AND NOT ANOTHER COUNTY. SOMETHING LIKE THAT BUT THERE ARE SPECIAL LAWS ALL OVER THE BOOKS THAT ALLOW ONE COUNTY TO DO SOMETHING AND THE NEXT COUNTY DOESN'T DO IT.

BUT --

JUSTICE SHAW HAD A QUESTION.

ON TODAY'S MARKET AND OTHER THAN THE OATH OR THE SWEARING IN, WHAT WOULD BE SOME OTHER REASONS FOR DISTINGUISHING BETWEEN A DEPUTY CLERK AND DEPUTY SHERIFF?

DEPUTY CLERK, WELL, THE DEPUTY CLERK, REALLY --

THEY DO PRACTICALLY THE SAME THINGS, WELL, THEY -- WHY SHOULDN'T THEY BE, FOR BARGAINING PURPOSES, EMPLOYEES? THEY -- OTHER THAN THE OATH, I AM HAVING A HARD TIME SEEING WHAT THE DISTINCTION WOULD BE FOR BARGAINING PURPOSES.

THE DISTINCTION BETWEEN DEPUTY SHERIFFS AND DEPUTY CLERKS?

RIGHT.

I THINK IT IS THE WORK THEY DO. THE CLERK, DEPUTY CLERKS, DO THE SAME KIND OF WORK THAT THE PEOPLE WHO WORK FOR THE SHERIFF THAT ARE NOT DEPUTIES. IN OTHER WORDS, IT IS THE NATURE OF THE WORK, OR DEPUTY TAX APPRAISER OR DEPUTY ANYBODY ELSE, BUT THE DEPUTY SHERIFF IS THE ONLY ONE THAT HISTORICALLY HAS HAD THE DISTINCTION, AND THEY ARE THE ONES, OF COURSE, THAT ARE -- THAT HAVE THE, YOU KNOW, LIFE AND DEATH IN THEIR HANDS, IF YOU WILL, AND THE KIND OF WORK THAT THEY DO. I WOULD DISTINGUISH THE DEPUTY ANYBODY ELSE FROM THE DEPUTY SHERIFFS, BECAUSE OF THE NATURE OF THE WORK THEY DO. IN SERVICE EMPLOYEES, YOU ALL SAID THAT THE LEGISLATIVE INTENT WAS A POLL STAR. CLEARLY THE LEGISLATURE HASN'T INTENDED, BY GENERAL LAW, TO INCLUDE THESE PEOPLE, AND I SUBMIT YOU HAVE GOT TO HAVE A BETTER REASON TO OVERRULE MURPHY THAN JUST BECAUSE YOU MAY DISAGREE WITH IT, AND I HAVE QUOTED JUSTICE STEPHENS FOR THAT PROPOSITION IN THE BRIEF.

BUT WHETHER YOU START BREAKING IT DOWN BETWEEN MANAGERIAL AND JUST NORMAL WORKING EMPLOYEE, THEN THE DEPUTY SHERIFF AND THE DEPUTY CLERK WOULD SEEMINGLY FALL ON ONE SIDE OF THAT OR THE OTHER. THEY WOULD EITHER BE IN MANAGEMENT OR THEY WOULD EITHER BE REGULAR EMPLOYEE, WOULDN'T THEY?

I THINK YOU CAN MAKE THE DISTINCTION, BASED ON THE TYPE OF WORK THEY DO AND PLUS THE HISTORICAL DISTINCTION BETWEEN DEPUTY SHERIFFS, WHICH IS THE ONLY KIND OF HISTORICAL DISTINCTION. NOBODY HAS EVER SAID THERE WAS AN HISTORICAL BASIS FOR HAVING A DEPUTY CLERK SOMEPLACE. IT HAS ONLY BEEN RELATED. THEY ARE UNIQUE BY VIRTUE OF THEIR RELATIONSHIP WITH THEIR -- WITH THE SHERIFFS, AND WE SUBMIT THAT THAT WOULD MAKE THE DISTINCTION, AND CASE LAW DICK -- DICTATES THAT THIS CASE BE AFFIRMED.

THANK YOU. MR. JOHNSON, ISN'T THERE, IN REAL LIFE OUT THERE, IN THE COUNTIES OF FLORIDA, A DISTINCTION AT THE WAY PEOPLE LOOK AT A DEPUTY SHERIFF, AS OPPOSED TO A PERSON WHO IS A POLICE OFFICER? FROM -- IF FROM NO OTHER BASIS, THAT THE SHERIFF IS ELECTED LAW ENFORCEMENT, AND LAW ENFORCEMENT AND THE DEPUTY SHERIFF IS SOMEONE THAT IS GIVEN TO THE POWER OF LAW ENFORCEMENT, THE ROLE THAT THE SHERIFF HAS. NOW, THAT IS A UNIQUE TYPE OF FUNCTION, AS OPPOSED TO A POLICE OFFICER, WHO WORKS FOR A MUNICIPALITY, WHO HAS GOT AN APPOINTED CHIEF, WHO SERVES AT THE PLEASURE OF THE MAYOR. ISN'T THAT A REAL DIFFERENCE THERE?

YOU ASKED ME THE QUESTION. I REPRESENTED LAW ENFORCEMENT OFFICERS FOR 21 YEARS, AS GENERAL COUNSEL OF THE FLORIDA POLICE BENEVOLENT ASSOCIATION. IN MY EXPERIENCE IN REPRESENTING, BOTH, DEPUTIES AND EVERY OTHER TYPE OF LAW ENFORCEMENT OFFICER, THEY ARE SERVING THE PUBLIC. THEY ARE DOING THE SAME DUTIES AND RESPONSIBILITIES, AND EXCEPT FOR THE FACT THAT THEY WEAR A GREEN UNIFORM, WHEN THEY GET OUT ON PATROL, WHEN THEY GET OUT TO ARREST A DRUNK OR STOP A CRIMINAL OR STAND OUTSIDE THIS COURT BECAUSE THEY ARE PROVIDING SECURITY, THERE IS ABSOLUTELY NO DISTINCTION, AND I THINK I CAN ASSERT IT YOU THAT, CERTAINLY, THE LAW ENFORCEMENT OFFICERS AMONG THEMSELVES, A LAW ENFORCEMENT IS A LAW ENFORCEMENT. ALL OF THEM FALL UNDER CHAPTER 940 -- 943.10, THE DEFINITION OF A LAW ENFORCEMENT OFFICER, WHETHER THEY ARE A DEPUTY, WHETHER THEY ARE A POLICE OFFICER, WHETHER THEY ARE A DEPUTY WHO HAS THE RIGHT TO COLLECTIVELY BARGAIN, THEY FUNCTION THE SAME. THERE IS NO SUBSTANTIAL DIFFERENCE. NOW, I WOULD LIKE TO VERY QUICKLY ADDRESS ONE ISSUE, AND THAT IS SIMPLY TO POINT OUT TO YOU THAT IT IS NOT UNHEARD OF TO OVERTURN DECISIONS. THE UNITED STATES SUPREME COURT, IN THE CASE OF BROWN VERSUS SCHOOL BOARD OF TOPEKA, KANSAS, CAME BACK, AFTER 50 YEARS, AND SAID WE HAVE LOOKED AT THE RIGHT TO PUBLIC EDUCATION IN A NEW LIGHT.

I THINK YOUR TIME IS UP.

RIGHT. IN THE CONTEXT. THANK YOU.

THANK YOU, COUNSEL, FOR YOUR ASSISTANCE IN THIS CASE.