

**IN THE CIRCUIT COURT OF THE SECOND JUDICIAL CIRCUIT
IN AND FOR LEON COUNTY, FLORIDA**

TEAMSTERS LOCAL UNION NO. 2011,

Plaintiff,

CASE NO.

vs.

STATE OF FLORIDA, RICK SCOTT in his capacity as Governor of the State of Florida, FLORIDA DEPARTMENT OF MANAGEMENT SERVICES, CRAIG J. NICHOLS, in his capacity as Secretary of the Department of Management Services, FLORIDA DEPARTMENT OF CORRECTIONS, MICHAEL D. CREWS, in his capacity as Secretary of the Department of Corrections,

Defendants.

COMPLAINT FOR DECLARATORY RELIEF

Plaintiff, TEAMSTERS LOCAL UNION NO. 2011, by and through undersigned counsel, brings this action pursuant to Chapter 86, Florida Statutes, and alleges as follows:

1. Plaintiff is in doubt, and has a bona fide, actual, present practical need for a declaration in regard to its members' rights under Florida Statute § 110.117. Plaintiff's request for declaration concerns a present controversy as to a state of facts, as detailed herein.

JURISDICTION AND VENUE

2. This is an action seeking declaratory relief pursuant to Chapter 86, Florida Statutes over which this Court has subject matter jurisdiction pursuant to Section 86.011, Florida Statutes.

3. Venue is proper in Leon County, Florida because Defendants reside in Leon County. § 47.011, Florida Statutes.

PARTIES

4. Plaintiff Teamsters Local Union No. 2011 is the certified collective bargaining representative pursuant to Chapter 447, Florida Statutes, for the statewide Security Services Bargaining Unit which includes all Correctional Officers, Correctional Officer Sergeants, Correctional Officer Lieutenants, Correctional Officer Captains (employee class codes 8003, 3005, 8011, and 8013) and Correctional Probation Officers (including employee class codes 8036, 8037, 8039, 8040, 8041, 8045, 8046, and 8047) (hereinafter collectively referred to as “Officers”) employed by the State of Florida (hereinafter “the State”) who work in the Florida Department of Corrections (hereinafter “DOC”). All employees in the bargaining unit are career service employees.

5. Defendant State of Florida Department of Management Services (“DMS”) is an agency of the State of Florida created by Section 20.22, Florida Statutes. Craig J. Nichols is the DMS Secretary charged with overseeing the DMS. Among other responsibilities, DMS is charged with administering the system of state personnel management and adopting rules necessary to effectuate the provisions of Chapter 110, Florida Statutes. Pursuant to Section 110.107, Florida Statutes, DMS is a “state agency” for the purpose of Chapter 110, and is bound by the provisions of Florida Statute § 110.117.

6. Defendant State of Florida Department of Corrections (“DOC”) is an agency of the State of Florida created by Section 20.315, Florida Statutes. Michael D. Crews is the DOC Secretary charged with overseeing the DOC. Pursuant to Section 110.107, Florida Statutes, DOC is a “state agency” for the purpose of Chapter 110, and is bound by the provisions of Florida

Statute § 110.117. All bargaining unit Correctional Officers and Correctional Probation Officers work in the DOC.

7. Defendant Florida and/or Governor Rick Scott employ the Correctional Officers and Correctional Probation Officers who work in the DOC. Plaintiff and Defendant Florida are signatories to a collective bargaining agreement. The CBA was signed on behalf of the State by the Governor, the Secretary of the Department of Management Services, and the State's Chief Labor Negotiator. Pursuant to Section 20.22, Florida Statutes, the duties of the Chief Labor Negotiator are determined by the DMS Secretary.

FACTS AND BACKGROUND

Applicable Law

8. Plaintiff asks this Court to construe Florida Statute § 110.117, and to determine the rights of its members, if any, thereunder. Part I of Chapter 110, Florida Statutes, provides "general state employment provisions." Therein, Section 110.117 "Paid holidays," provides as follows:

(1) The following holidays shall be paid holidays observed by all state branches and agencies:

- (a) New Year's Day.
- (b) Birthday of Martin Luther King, Jr., third Monday in January.
- (c) Memorial Day.
- (d) Independence Day.
- (e) Labor Day.
- (f) Veterans' Day, November 11.
- (g) Thanksgiving Day.
- (h) Friday after Thanksgiving.
- (i) Christmas Day.
- (j) If any of these holidays falls on Saturday, the preceding Friday shall be observed as a holiday. If any of these holidays falls on Sunday, the following Monday shall be observed as a holiday.

9. Section 110.117, Florida Statutes, clearly indicates that the nine (9) aforementioned holidays “...shall be paid holidays observed by all state branches and agencies.”

Id.

10. For the purpose of Chapter 110, “state agency” is “...any official, officer, commission, board, authority, council, committee, or department of the executive branch...” Section 110.107, Florida Statutes.

11. Pursuant to Section 20.315, Florida Statutes, the DOC is a “state agency” within the meaning of Section 110.107, and is bound by the “paid holiday” provision in Section 110.117, Florida Statutes.

12. Pursuant to Sections 110.1055 and 110.219, Florida Statutes, the DMS is charged with adopting rules to implement Section 110.117, “paid holidays,” for the State’s career service employees. *Id.* at § 110.219(5)(c).

13. Pursuant its rulemaking authority, DMS adopted Rule 60L-34.0032-2, F.A.C., which indicates that it was adopted to implement Section 110.219, 110.117, Florida Statutes.

14. Through Rule 60L-34.0032-2, F.A.C., DMS has created a way for agencies with facilities/institutions that must remain open and operational on the holidays declared in §110.117 to comply with §110.117 by providing employees who must work with the equivalent of a “paid holiday.” 60L-34.0032-2, F.A.C.

15. Rule 60L-34.0032-2, indicates that “[a]ll employees are entitled to observe the holidays identified in Section 110.117 of the Florida Statutes; provided, that to be eligible for holiday pay, an employee must be in pay status (actual work or paid leave) for at least a portion of the workday before the holiday.” The Rule further indicates that for full-time career services

employees, such as the members of the Security Services Bargaining Unit, agencies shall credit the holidays as follows:

If the holiday is observed on the employee's established workday and the employee is required to work, credit the employee with special compensatory leave equal to the time worked on the holiday, not to exceed the number of hours in the employee's established workday. However, if the holiday falls on an established workday of less than eight hours, credit the employee with an eight-hour holiday.

Id. at 60L-34.0032-2(3)(c).

16. By way of comparison, an employee in a senior management service position within the correctional institutions (a Correctional Officer Major, Correctional Officer Colonel, Assistant Warden, or Warden) is entitled to observe a holiday, listed in Section 110.117, by taking a day off with pay. Rule 60L-34.0032-2(1) further indicates that if senior management service employee is "unable to observe a holiday, the employee may take an alternate day off during the work period." *Id.*

17. Thus, according to DMS, a career service employee who is required to work on an observed holiday receives at least eight (8) hours of "special compensatory leave," which, if unused can be "cashed out" upon separation from employment with one credit/hour equaling one hour of pay. Rule 60L-34.0044, F.A.C. ("When an employee separates from an agency, the agency shall pay the employee for all unused special compensatory leave credits at the employee's current regular hourly rate of pay.")

Facts Underlying the Present Controversy

Background

18. The DOC is the third largest state prison system in the country with 143 facilities statewide. Whether or not it is Christmas Day, or any of the other eight (8) enumerated holidays

in Section 110.117, the State facilities housing inmates must remain open and operational. Likewise, hundreds of Correctional Officers must spend one or more holidays away from family and loved-ones, working at their respective facility.

19. At all times relevant hereto, Correctional Officers who work on a holiday have received one credit/hour of special compensatory leave time for each hour they work, pursuant to Section 110.117, Florida Statutes, and Rule 60L-34.0032-2, F.A.C.

20. For many years prior to the Teamsters' representation of the bargaining unit, DOC managerial/administrative personnel encouraged Corrections Officers to work on the holidays enumerated in § 110.117 by stating, consistent with the law, that upon retirement, Officers could then "cash out" (receive one hour of pay for each credit/hour) their special compensatory leave credits to supplement their retirement. DOC managerial/administrative personnel encouraged Corrections Officers to "bank," or keep, as opposed to use, their special compensatory leave credits.

21. Also, since at least 1993, the DOC has had the ability to require any Officer to reduce his earned, accumulated, number of special compensatory leave credits to 240 hours/credits by providing the Officer with notice, and then scheduling the leave time so that the Officer could have a paid day or days off. Each day off would then reduce the Officers' earned "bank" of accrued special compensatory leave hours by 8 hours/credits.

22. Despite having the ability to do so, the DOC did not reduce Officers' banks/balances of special compensatory leave hours/credits to 240 hours.

23. Thus, by encouraging Officers to bank/keep their special compensatory leave credits, and by failing to schedule accumulated hours/credits, despite having the ability to do so,

the State/DOC created what it perceived to be a problem with regard to Corrections Officers' accumulated banks/balances of special compensatory leave hours/credits in excess of 240 hours.

24. Long after the State/DOC, not the Officers, created what they perceived as a problem with earned, accrued special compensatory leave hours/credits, the State is now attempting to "fix" the issue by requiring Officers to forfeit their earned special compensatory leave hours/credits.

25. The State is attempting to ameliorate its perceived problem – the problem that it created by its own practices – at the Corrections Officers' expense.

26. The State proposed that as of July 1, 2012, DOC management be required to schedule, and that Officers be required to use, all future hours/credits of special compensatory leave time within the six month period (May 1st – Oct. 31st; Nov. 1st – April 30th) that immediately succeeds the work period in which the leave is credited. The State further proposed that all special compensatory leave credits/hours that are not used in the relevant time period shall be forfeited.

27. The Teamsters disagreed with the State's proposed language, the issue of special compensatory leave hours/credits went to impasse, the impasse was resolved in the State's favor, and the "shall be forfeited" language was imposed upon the bargaining unit. Thus, whether or not the Corrections Officers ratified the collective bargaining agreement ("CBA"), the language would be imposed on them for the 2012-2013 fiscal year, and would become the status quo between the parties.

28. On July 4, 2012, a holiday recognized by the statute, Officers state-wide worked the holiday and therefore earned special compensatory leave time hours/credits. On September

3, 2012, Labor Day, also a holiday under § 110.117, Officers state-wide worked the holiday and therefore earned special compensatory leave time hours/credits.

29. Sometime prior to the expiration of the six month period within which the DOC was to schedule, and Officers were to use, special compensatory leave time credits/hours earned from working the 4th of July and Labor Day (2012), the DOC concluded that it was not going to be able to schedule all of the Officers' earned time due to staffing issues and/or other administrative/managerial issues. Based thereon, the DOC decided to extend the time in which it could schedule, and Officers could use, special compensatory leave credits/hours earned from working the 4th of July and Labor Day (2012).

30. However, by April 29, 2013, the last day of the extension of time nominated by the DOC, the DOC had still been unable to schedule (and the Officers had still been unable to use) a substantial amount of special compensatory leave credits/hours earned from the 4th of July and Labor Day (2012).

31. Thereafter, on May 1, 2013, the DOC deleted, "wiped off the books," all existing (unscheduled, unused) special compensatory leave hours/credits that Officers earned from working the 4th of July and Labor Day (2012). The DOC caused this forfeiture of hours/credits despite the fact that, due to staffing and/or administrative issues, and no fault of their own, the Officers were prohibited from using the time during the specified window.

32. The DOC caused the forfeiture of hours/credits despite Florida Statute § 110.117.

The Present, Ripening, Controversy

33. On November 12, 2012, Veterans' Day observed, a holiday recognized by § 110.117, Officers state-wide worked the holiday and therefore earned special compensatory leave time hours/credits.

34. On November 22, 2012, Thanksgiving, a holiday recognized by § 110.117, Officers state-wide worked the holiday and therefore earned special compensatory leave time hours/credits.

35. Likewise, on November 23, 2012, a holiday recognized by § 110.117, Officers state-wide worked the holiday and therefore earned special compensatory leave time hours/credits.

36. On December 25, 2012, Christmas, a holiday recognized by § 110.117, Officers state-wide worked the holiday and therefore earned special compensatory leave time hours/credits.

37. On January 1, 2013, New Year's Day, a holiday recognized by § 110.117, Officers state-wide worked the holiday and therefore earned special compensatory leave time hours/credits.

38. On the birthday of Martin Luther King, Jr., third Monday in January 2013, a holiday recognized by § 110.117, Officers state-wide worked the holiday and therefore earned special compensatory leave time hours/credits.

39. Due to an inability to schedule the special compensatory leave hours/credits because of staffing and/or managerial/administrative issues, the Secretary of the DOC extended the period of time by which hours/credits for the aforementioned six (6) holidays could be scheduled/used until October 31, 2013.

40. Based on the number of special compensatory leave hours/credits Officers earned from working the aforementioned six (6) holidays that have yet to be scheduled/used, in conjunction with the existing staffing limitations, the DOC will be unable to schedule, and the

Officers unable to use, all of the earned special compensatory leave credits/hours from working on those holidays.

41. Thus, on November 1, 2013, the DOC will again forfeit Officers' special compensatory leave hours/credits earned from Veterans Day (2012), Thanksgiving and the day after Thanksgiving (2012), Christmas (2012), New Year's Day (2013) and/or Martin Luther King, Jr. Day (2013).

42. The DOC will cause the forfeiture of hours/credits despite Florida Statute § 110.117.

34. Likewise, and at least until July 1, 2014, the DOC will continue to cause the forfeiture of Officers' earned special compensatory leave hours/credits, for working on a holiday designated in Florida Statute § 110.117, upon the expiration of the relevant six-month time period.

Officers' Rights Under Florida Statute § 110.117

35. Based on the law and the facts, alleged above, the Officers are in doubt as to their right to a paid holiday, or the equivalent thereto, under Florida Statute § 110.117.

36. First, in light of the contents of Florida Statute § 110.117, including but not limited to the requirement that the holidays enumerated therein "shall be paid holidays observed by all state branches and agencies," does Florida Statute § 110.117 provide state career service employees a statutory right to a paid holiday? Based thereon, Plaintiff seeks a declaration that Florida Statute § 110.117 provides state career service employees a statutory right to a paid holiday (or equivalent compensation).

37. Second, may a career service state employee be required, by the state agency in which he works, to forfeit his "paid holidays" set forth in Florida Statute § 110.117? In this

regard, Plaintiff seeks a declaration that a career service state employee cannot be required, by the state agency in which he works, to forfeit his “paid holidays” set forth in Florida Statute § 110.117.

38. Third, absent a valid waiver, may a career service state employee be required, by the state agency in which he works, to forfeit his “paid holidays” set forth in Florida Statute § 110.117? In this regard, Plaintiff seeks a declaration that, absent a valid waiver, a career service state employee may not be required, by the state agency in which he works, to forfeit his “paid holidays” set forth in Florida Statute § 110.117.

39. Lastly, once a career service state employee earns special compensatory hours/credits for working a “paid holiday,” as defined in Florida Statute § 110.117, may he be required to forfeit said special compensatory hours/credits when he does not have an opportunity, due to no fault of his own, to use the special compensatory hours/credits? In this regard, Plaintiff seeks a declaration that once a career service state employee earns special compensatory hours/credits for working a “paid holiday,” as defined in Florida Statute § 110.117, he may not be required to forfeit said special compensatory hours/credits when he does not have an opportunity, due to no fault of his own, to use the special compensatory hours/credits.

Adverse Interest(s) in the Subject Matter

40. The State, including DOC and DMS, and the Corrections Officers have adverse interests with regard to Florida Statute § 110.117 and the DOC’s required conduct under Florida Statute § 110.117. The State, including DOC and DMS, has demonstrated an interest in reducing and/or eliminating any requirement to provide Corrections Officers with a “paid holiday” (or an equivalent thereto) pursuant to Florida Statute § 110.117. In contrast, the Corrections Officers have an interest in receiving a “paid holiday” (or an equivalent thereto). Further, it is apparent

that the State, including DOC and DMS, believes that forfeiting Officers' earned, accrued, special compensatory leave – without providing the Officers with a chance to use the hours/credits – is compliant with Florida Statute § 110.117. On the other hand, the Officers believe that the DOC is not compliant with Florida Statute § 110.117 by providing for the opportunity to earn special compensatory leave hours/credits, but depriving the Officers of any opportunity to use the hours/credits before taking the hours/credits away (thus depriving the Officers of any benefit).

41. Further, despite the differences amongst the bargaining units in terms of aggregate special compensatory leave hour/credit balances, the ability for agencies to schedule hours/credits for use, and the ability of employees to actually use the hours/credits, the DMS proposed the same special compensatory contract language for all the bargaining units with which it negotiates. The DMS therefore has an interest in maintaining a uniform position on special compensatory leave hours/credits throughout all the bargaining units with which it negotiates. On the other hand, the Plaintiff does not have an interest in a “one size fits all” approach, especially since the Correctional Officers account for the largest amount of accumulated special compensatory leave credits/hours, and the DOC has experienced staffing issues such that special compensatory leave credits/hours cannot be schedule for use.

COUNT I – DECLARATORY JUDGMENT

42. The allegations in Paragraphs 1-41 are realleged and incorporated herein by reference.

43. Plaintiff is in doubt or is uncertain as to existence or non-existence of its bargaining unit members' rights, status, power, or privileges under Florida Statute § 110.117 and

has an actual, practical, and present need for a declaration of said rights, status, power, or privileges under Florida Statute § 110.117.

44. As indicated in Paragraphs 18 – 34, *infra*, Plaintiff has a present, bona fide, justiciable, controversy, as to its bargaining unit members’ right to a “paid holiday” (or equivalent thereto).

45. Plaintiff and Defendants have interests in the matter that are adverse with regard to the provision of a “paid holiday” (or equivalent thereto) and/or the ability to retain earned special compensatory leave hours/credits.

WHEREFORE, Plaintiff respectfully requests that this Court interpret Florida Statute § 110.117, and enter final judgment in regard to Plaintiff’s bargaining unit members’ rights under the same:

A. Declaring that this Court has jurisdiction of a real and active justiciable controversy between these parties;

B. Declaring that Florida Statute § 110.117 provides state career service employees a statutory right to a paid holiday (or equivalent compensation);

C. Declaring that a career service state employee cannot be required, by the state agency in which he works, to forfeit his “paid holidays” set forth in Florida Statute § 110.117;

D. Declaring that absent a valid waiver, a career service state employee cannot be required, by the state agency in which he works, to forfeit his “paid holidays” set forth in Florida Statute § 110.117;

E. Declaring that once a career service state employee earns special compensatory hours/credits for working a “paid holiday,” as defined in Florida Statute § 110.117, he cannot be


required to forfeit said special compensatory hours/credits when he does not have an opportunity, due to no fault of his own, to use the special compensatory hours/credits;

F. Ordering such other and further relief as this Court may deem appropriate.

Respectfully submitted,

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