

STATE OF FLORIDA  
PUBLIC EMPLOYEES RELATIONS COMMISSION

IN RE

Case No. MS-2021-035

EMERGENCY PETITION FOR  
VARIANCE OF JEREMY NORTON  
AND THE UNITED FACULTY OF  
FLORIDA.

Order No.: 21MS-307  
Date Issued: October 11, 2021

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FINAL ORDER

On September 28, 2021, the United Faculty of Florida (Union) and Jeremy Norton (collectively Petitioners)<sup>1</sup> filed an emergency petition seeking a variance from Florida Administrative Code Rule 60CC-4.002. The petition indicates that the Union represents bargaining units of employees employed by the Lake-Sumter State College Board of Trustees (Employer) under Certifications 1943 and 1948. The petition also indicates that the Employer does not object to the requested relief.

Pursuant to the requirements for seeking a variance in section 120.542, Florida Statutes (2021),<sup>2</sup> and Florida Administrative Code Rule 28-104.004, notice of the emergency petition was published on the Commission's website and in the Florida Administrative Register. 47 Fla. Admin. Reg. 191 (Oct. 1, 2021). The notice indicated that any interested person could submit written comments regarding the petition within five days of the publication of the notice. No comments were received. Because there are no material facts in dispute, the petition is proceeding under the provisions of section 120.57(2), Florida Statutes. Moreover, the Petitioners have alleged specific facts

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<sup>1</sup> Norton is the president of the Lake-Sumter State College chapter of the Union.

<sup>2</sup> All statutory references are to the 2021 edition of the Florida Statutes.

regarding the nature of the emergency and that they will suffer an immediate adverse effect if the petition proceeds according to the normal time frames. See Fla. Admin. Code R. 28-104.004, 28-104.005 (listing the requirements and timeframes for processing emergency petitions requesting variance of a rule). Therefore, expeditious processing of the petition is appropriate.

The Union is an employee organization within the meaning of section 447.203(11), Florida Statutes. The Union is the certified bargaining agent for units of the Employer's employees. See Certifications 1943 and 1948. According to the petition, the Union and the Employer have reached a tentative agreement on collective bargaining agreement (CBA) language and/or memorandum of understanding (MOU) language that must be ratified pursuant to the procedures in section 447.309, Florida Statutes, and Florida Administrative Code Rule 60CC-4.002.

Based on the ongoing threat posed by COVID-19, the Petitioners request that the Commission grant a variance from the portions of Florida Administrative Code Rule 60CC-4.002 that require ratification votes to be conducted either at a ratification meeting or by mail and that, regardless of the method used to conduct the election, ballots be publicly counted. For health and safety reasons, the Petitioners seek to conduct all bargaining unit communications electronically, all balloting and tallying electronically, and the announcement of results electronically as well. The Petitioners assert that the ratification vote can be conducted fairly and democratically while complying with the underlying principles set forth in section 447.309, Florida Statutes. The Petitioners seek that the variance outlined above be granted through December 15, 2021.

Since the start of the outbreak, the Commission has granted a number of similar emergency petitions for a variance from Rule 60CC-4.002.<sup>3</sup> While it is unnecessary to reiterate these decisions in their entirety, it is sufficient to note that in each of these cases we recognized that the current COVID-19 outbreak creates a substantial hardship in complying with Rule 60CC-4.002.<sup>4</sup> Moreover, the instant petition is not opposed by the Employer. We additionally note that we have published a Notice of Development of Rulemaking to consider possible amendment of Rule 60CC-4.002 to allow certified bargaining agents to conduct all aspects of ratification elections electronically. 47 Fla. Admin. Reg. 142 (July 23, 2021). Accordingly, we grant the variance through December 15, 2021, with the same qualifications from our earlier decisions, which are outlined below.

The Petitioners state that they are confident the Union can conduct an electronic ratification vote fairly and democratically. However, the Petitioners do not expressly outline the procedures to be used in conducting that vote. Nevertheless, the Petitioners

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<sup>3</sup> See, e.g., *In re Emergency Petition for Variance of Yovanna Pineda and the United Faculty of Florida*, 47 FPER ¶ 148 (2020); *In re Emergency Petition for Variance of Jennifer Robinson and the United Faculty of Florida*, 47 FPER ¶ 147 (2020); *In re Emergency Petition for Variance of Denise Hinson and the Association of Bay County Educators*, 47 FPER ¶ 146 (2020). For citations to other decisions granting emergency variance petitions, see *Commission Continues to Grant Emergency Variance Petitions Based on COVID-19 Outbreak*, PERC News, Vol. 21, Issue 1 (2021); *Commission Continues to Grant Emergency Variance Petitions Based on COVID-19 Outbreak*, PERC News, Vol. 20, Issue 4 (2020); *Commission Grants Additional Emergency Variance Petitions Based on COVID-19 Outbreak*, PERC News, Vol. 20, Issue 3 (2020); and *Commission Emergency Rule Variances in Response to COVID Outbreak*, PERC News, Vol. 20, Issue 2 (2020), available at [www.perc.myflorida.com](http://www.perc.myflorida.com).

<sup>4</sup> Our earlier decisions in these cases were based, in part, on the Governor's Executive Order Number 20-052, which ultimately expired on June 26, 2021. See Fla. Exec. Order No. 21-94 (April 27, 2021) (extending Fla. Exec. Order No. 20-052).

are aware of the Commission's decision in *Beightol v. United Teachers of Dade*, 38 FPER ¶ 293 (2012), and the Commission's expressed concerns with the electronic voting process that was used in that case. We urge the Petitioners to use their best judgment in conducting an electronic vote. In granting the petition, we are providing a variance from the strict requirements of the rule; however, we are not insulating the Petitioners from voters' complaints about the fairness of the electronic process that is used.

Based on the nature of the relief granted in this order, the Petitioners may wish to consider delaying the ratification vote as an alternative to proceeding forward with an electronic vote. We recognize that the Petitioners indicate that part of the emergency nature of their petition is that time is of the essence in conducting the ratification vote. In support of this statement, the Petitioners cite Commission case law about the need to "promptly" present agreements to bargaining unit members for consideration and ratification. See *Village of Key Biscayne Professional Firefighters, Local 3638, IAFF v. Village of Key Biscayne*, 32 FPER ¶ 119 (2006) (noting that Florida Administrative Code Rule 60CC-4.002(1) requires the certified bargaining agent to promptly present the proposed agreement to the members of the bargaining unit for consideration and ratification). The Commission has stated that the prompt submission of the agreement "reduces the opportunities for changed circumstances to occur which might result in a party's reluctance or refusal to ratify the agreement." *Id.*

While the Petitioners do not expressly request relief from the "prompt" submission requirement of Florida Administrative Code Rule 60CC-4.002(1), we also grant a

variance from that requirement through December 15, 2021. This will allow the Petitioners additional time to determine whether it is preferable to use the traditional ratification vote methods under the rule, and thereby forego any potential voter complaints with a new electronic voting process, or to proceed with electronic voting.

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 October 11, 2021.

BY: Barry Adams  
Clerk



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COPIES FURNISHED:

*For Petitioners*

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*For Lake-Sumter State College Board of Trustees*

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