

**STATE OF FLORIDA  
PUBLIC EMPLOYEES RELATIONS COMMISSION**

**GREGORY COOK and  
JUSTIN WHITE,**

**Charging Parties,**

v.

**Case Nos.    CA-2017-053  
                     CA-2017-054**

**CITY OF PORT ORANGE,**

**Respondent.**

\_\_\_\_\_ /

**GREGORY COOK and  
JUSTIN WHITE**

**Charging Parties,**

v.

**Case Nos.    CB-2017-022  
                     CB-2017-023**

**COASTAL FLORIDA POLICE  
BENEVOLENT ASSOCIATION,  
INC.,**

**Respondent.**

\_\_\_\_\_ /

**JOINT MOTION FOR CONSENT ORDER  
AND APPROVAL OF SETTLEMENT AGREEMENT**

Charging Parties, GREGORY COOK (“Cook”), JUSTIN WHITE (“White”), and Respondents CITY OF PORT ORANGE (“City”), and the COASTAL FLORIDA POLICE BENEVOLENT ASSOCIATION, INC. (“Coastal PBA”) (collectively the “Parties”), by and through undersigned counsel, submit this Joint Motion for Consent Order, and in support thereof, state as follows:

1. On August 23, 2017 Port Orange Police Officers Cook and White filed unfair labor practice charges against Coastal PBA, for a violation of Section 447.501(2)(a), Florida Statutes;

and against the City of Port Orange for a violation of Sections 447.501(1)(a) and (e). Cook and White alleged that their certified bargaining agent, Coastal PBA, was operating as an improper employer-assisted labor organization by having agents of the Employer, Port Orange Police Department Captain Kimberly Kilpatrick (a managerial employee) and Lieutenant Eric Fisher, serve as Union President and Union Secretary/Treasurer, respectively, of a bargaining unit comprised of Officers and Sergeants. PERC's General Counsel issued a Notice of Sufficiency in the case on August 31, 2017.

2. Soon after Cook and White filed the instant unfair labor practice charges, Port Orange Captain Kimberly Kilpatrick resigned from her position as Coastal PBA President, and Port Orange Lieutenant Eric Fisher resigned from his position as Coastal PBA Secretary/Treasurer.

3. On October 11, 2017, the Hearing Officer granted a Motion to Consolidate the Charges - CA-2017-053; CA-2017-054; CB-2017-022; and CB-2017-023.

4. On November 27, 2017, the City filed a Notice of Settlement and indicated that the Parties had reached an agreement in principle, subject to final memorialization in writing. On November 28, 2017, the Hearing Officer Issued an Order to Continue the Hearing.

5. The Commission has long held that the private settlement of unfair labor practice charges is beneficial to the public as well as the parties and should be encouraged. E.g., Marsh v. City of Milton, 10 FPER ¶ 15207 (1984); In re AFSCME, 8 FPER ¶ 13278 at 490 (1982), aff'd, 430 So.2d 481 (Fla. 1st DCA 1983).

6. The Parties have agreed upon the terms of a Settlement Agreement, attached hereto as "Exhibit A," and seek the Commission's approval of the same. Included within the attached Settlement Agreement is an agreement between the Parties that the Coastal PBA admits committing an unfair labor practice, a violation of Section 447.501(2)(a), Florida Statutes, by

allowing a Port Orange Captain, a managerial position outside the relevant bargaining unit, Capt. Kilpatrick, to serve as Coastal PBA President and by allowing a Port Orange Lieutenant, a supervisory position outside the relevant bargaining unit, to serve as the Coastal PBA Secretary/Treasurer.

7. By entering into the Settlement Agreement, the City of Port Orange does not admit liability, nor does the City admit that it committed an unfair labor practice.

8. The Coastal PBA has agreed to post a notice to bargaining unit employees, which shall be posted for sixty days, following the issuance of the Commission's Consent Order, in conspicuous locations where notices to employees are generally posted having the following provisions:

**NOTICE TO EMPLOYEES POSTED PURSUANT TO A CONSENT ORDER ISSUED BY THE PUBLIC EMPLOYEES RELATIONS COMMISSION.**

FOLLOWING the filing of an Unfair Labor Practice charge that was found sufficient by the Public Employees Relations Commission the parties entered into a settlement agreement in which they agreed to the entry of a Consent Order and to the posting of this Notice by the Coastal Police Benevolent Association ("Coastal PBA").

WE, Coastal PBA, WILL NOT interfere with, restrain or coerce Port Orange Police Officers or Sergeants in the exercise of any rights guaranteed them under Part II, Florida Statutes; and

WE, Coastal PBA, knowingly allowed the usually clear demarcation between public employer and employee organization to be blurred when we permitted managerial employee, Captain Kimberly Kilpatrick, to serve as Union President and Lieutenant Eric Fisher to serve as Union Secretary/Treasurer, of the Union certified to represent the bargaining unit of Port Orange Police Officers' and Sergeants, despite the Captain's and Lieutenant's status as an agents of the Employer.

WE, Coastal PBA, WILL NOT allow Coastal PBA to operate as an illegal employer-assisted or dominated labor organization.

WE WILL maintain the independence of Coastal PBA from the influence of the employer and not violate our duty to all bargaining unit members to maintain such independence; and

WE, Coastal PBA, WILL NOT allow managerial employees in the Port Orange Police Department to serve as Coastal PBA President, nor will we allow agents of the Employer to hold any union

office.

WE, Coastal PBA, WILL NOT in like or related manner interfere with, restrain, or coerce bargaining unit employees in the exercise of rights guaranteed them under Chapter 447 Part II, Florida Statutes.

WE, Coastal PBA, WILL take the following affirmative action:

WE, Coastal PBA, WILL cease and desist from violating Section 447.501(2)(a), Florida Statutes.

We, Coastal PBA, WILL notify the Public Employees Relations Commission that we have posted this notice in conspicuous locations where employee may be apprised of his contents. This notice shall remain posted for sixty consecutive days next following the date of entry of a Consent Order in this controversy.

The Coastal PBA will within twenty days of entry of the Consent Order notify the Commission of what steps have been taken to comply with the order.

WHEREFORE, for the reasons stated herein, the Parties jointly request that the Commission review the Motion and proposed settlement agreement and find that such agreement adequately resolves the unfair labor practice charge; that the settlement agreement is approved by the Commission and that the Joint Motion for Consent Order be granted.

Respectfully submitted:

INTERNATIONAL UNION OF POLICE  
ASSOCIATIONS, AFL-CIO  
1549 Ringling Blvd., 6th Floor  
Sarasota, Florida 34236-6772  
Telephone: (954) 960-3257  
Facsimile: (754) 200-8802  
Email: [hvanhorsten@iupa.org](mailto:hvanhorsten@iupa.org)

By: s/ Holly E. Van Horsten  
Holly E. Van Horsten, Esq.  
Florida Bar No. 0057791

Counsel for Charging Parties

COASTAL POLICE BENEVOLENT ASSN.  
810 Fentress Court, Suite 150  
Daytona Beach, FL 32117  
(386) 304-2393

By: s/ Greg Forhan  
Greg Forhan, Esq.  
Florida Bar No. 85103

Counsel for Respondent Coastal PBA

ALLEN, NORTON & BLUE, P.A.  
1477 W. Fairbanks Avenue, Suite 100  
Winter Park, FL 32789  
Tel: (407) 5712152  
Fax: (407) 571-1496

By: s/ Wayne L. Helsby  
Wayne L. Helsby  
Florida Bar No. 362492  
Marc A. Sugerman  
Florida Bar No. 0081876

Counsel for Respondent City

### **CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that the foregoing has been filed with PERC and that a copy of the foregoing has been simultaneously sent via U.S. Mail or email to Respondent's Counsel, Greg Forhan, Esq., General Counsel, Coastal Florida PBA/PEA, 810 Fentress Court, Suite 150, Daytona Beach, FL 32117, [gforhan@cfpba.us](mailto:gforhan@cfpba.us), and Wayne L. Helsby and Marc A. Sugerman of Allen, Norton & Blue, P.A., 1477 W. Fairbanks Avenue, Suite 100, Winter Park, FL 32789, [msugerman@anblaw.com](mailto:msugerman@anblaw.com) [WHelsby@anblaw.com](mailto:WHelsby@anblaw.com), this 15<sup>th</sup> day of December, 2017.

By: s/ Holly E. Van Horsten  
Holly E. Van Horsten, Esq.

**STATE OF FLORIDA  
PUBLIC EMPLOYEES RELATIONS COMMISSION**

**GREGORY COOK and  
JUSTIN WHITE,**

**Charging Parties,**

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**Case Nos. CA-2017-053  
CA-2017-054**

**CITY OF PORT ORANGE,**

**Respondent.**

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**GREGORY COOK and  
JUSTIN WHITE**

**Charging Parties,**

v.

**Case Nos. CB-2017-022  
CB-2017-023**

**COASTAL FLORIDA POLICE  
BENEVOLENT ASSOCIATION,  
INC.,**

**Respondent.**

\_\_\_\_\_ /

**SETTLEMENT AGREEMENT**

This SETTLEMENT AGREEMENT (“Agreement”) is made and entered into by and between GREGORY COOK (“Cook”), JUSTIN WHITE (“White”), the CITY OF PORT ORANGE (“City”), and the COASTAL FLORIDA POLICE BENEVOLENT ASSOCIATION, INC. (“CFPBA”). Throughout this Agreement, Cook, White, the City, and the CFPBA shall be referred to as the “Parties.”

WHEREAS, there are pending unfair labor practice charges filed with the Public Employees Relations Commission (“Commission”) by Cook and White against the City, Case Nos. CA-2017-053 and CA-2017-054;

WHEREAS, there are pending unfair labor practice charges filed with the Commission by Cook and White against the CFPBA, Case Nos. CB-2017-022 and CB-2017-023;

WHEREAS, the City and the CFPBA desire to resolve the pending unfair labor charges in order to avoid the disruption and expense of further litigation; and

WHEREAS, the Parties desire to fully and completely resolve and settle any and all issues and claims, known and unknown, which the Parties had, have, or may have had between them related to the issues raised in the unfair labor practice charges, in an amicable fashion and without additional delay or further litigation;

NOW THEREFORE, in consideration of the promises and mutual covenants contained herein, the sufficiency of which is hereby acknowledged, the Parties agree as follows:

Promises of the City

1. The City denies that it committed an unfair labor practice, and this Agreement shall not act as an admission of fault, but in executing this Agreement, the City agrees to resolve the unfair labor practice charge in the spirit of cooperation and good labor relations, and to avoid disruption to the City's operations.

2. The City agrees to issue a letter to all Port Orange Police Officers and Sergeants, which is attached hereto as Exhibit A and shall be issued on City of Port Orange Police Department stationary.

Promises of the CFPBA

3. The CFPBA acknowledges that it committed an unfair labor practice, and agrees to resolve the unfair labor practice charge in the spirit of cooperation and good labor relations, and to avoid disruption to the CFPBA's operations.

4. The CFPBA agrees that it will not interfere with, restrain, or coerce any public employees in the exercise of any rights guaranteed them under Chapter 447, Fla. Sta.

5. The CFPBA agrees that it will instruct its employees and officers to refrain from engaging in any activity that interferes with, restrains, or coerces any public employees in the exercise of any rights guaranteed them under Chapter 447, Fla. Stat.

6. The CFPBA agrees to post, at the direction of the Commission, a notice advising its members that it will not interfere with, restrain, or coerce any public employees in the exercise of any rights guaranteed them under Chapter 447, Fla. Sta.

Promises of Cook and White

7. In consideration for, and conditioned upon the promises of the City and the CFPBA set forth in Paragraphs one (1) through five (5) above, Cook and White agree to withdraw the above-referenced unfair labor practice charges filed with the Commission against the City and the CFPBA.

8. Cook and White waive the right to file any additional charges, grievances, or any other causes of action arising out of the facts and circumstances underlying the above-referenced unfair labor practices filed with the Commission against the City and the CFPBA.

## Mutual Promises

9. The Parties agree that this Agreement shall not set any precedent, and shall not be considered for any purpose by the Parties in any future unfair labor practice charge, grievance, or arbitration.

10. Each party will bear its own costs and attorneys' fees related to the litigation and settlement of the unfair labor practice charges.

11. **Complete Integration of Agreement.** This Agreement is made without reliance upon any statement or representation of any party hereby released except those contained in this Agreement. This Agreement contains the entire understanding of the Parties and may not be modified except by writing which is signed by all the parties to this Agreement. Any oral or written promises or assurances not contained in this Agreement are waived, abandoned, withdrawn, and without legal effect; and this Agreement supersedes any prior written agreements.

12. **Construction of Agreement.** The language of all parts of this Agreement shall be construed as a whole, according to its plain meaning, and not for or against the drafter.

13. **Enforcement and Venue.** Any breach of any term, provision, or obligation of this Agreement by any party shall entitle the other to seek enforcement of such term, provision, or obligation in a court of law of competent jurisdiction. It is expressly understood and agreed that this Agreement shall be governed by the law of the State of Florida, with exclusive venue for any action based upon any alleged breach of any term, provision, or obligation of this Agreement in Volusia County, Florida.

14. **Specific Performance.** Should either party default in any material manner with respect to any term, provision, or obligation set forth in this Agreement, the sole and exclusive remedy for the non-defaulting party shall be a suit for specific performance with the prevailing party receiving attorneys' fees and costs resulting therefrom.

15. **Severability.** All warranties, representations, terms, conditions, covenants, agreement, and releases contained herein shall survive this Agreement. Should any provision of this Agreement be declared or be determine by any court to be illegal or invalid, the validity of the remaining parts, terms, or provisions shall remain in full force and effect, and said illegal or invalid parts, terms, or provisions shall be deemed not part of this Agreement.

16. **Execution.** This Agreement may be executed in one or more counterparts, each of which shall be deemed to be an original, but all of which together shall constitute the same Agreement, and may be consummated by facsimile or electronically transmitted signatures.

17. **Acknowledgment.** The Parties, as signatories to this Agreement, acknowledge that they have read this Agreement, that they fully know, understand, and appreciate its contents, that they have been advised by or have had an opportunity to consult with their counsel regarding its contents, and that they are executing the same and making the promises herein voluntarily, with authority, and of their own free will.



**IN WITNESS WHEREOF**, the Parties have executed this Agreement, consisting of four (4) pages (including signature pages), as of the dates herein appearing.

DATED: \_\_\_\_\_  
\_\_\_\_\_

GREGORY COOK

DATED: \_\_\_\_\_  
\_\_\_\_\_

JUSTIN WHITE

ON BEHALF OF THE CITY OF PORT ORANGE

DATED: \_\_\_\_\_

By: \_\_\_\_\_  
Printed Name: \_\_\_\_\_  
Title: \_\_\_\_\_

ON BEHALF OF THE COASTAL FLORIDA  
POLICE BENEVOLENT ASSOCIATION, INC.

DATED: \_\_\_\_\_

By: \_\_\_\_\_  
Printed Name: \_\_\_\_\_  
Title: \_\_\_\_\_

To all Port Orange Police Officers and Sergeants,

I just wanted to take a moment to assure you that the City of Port Orange, and its Police Department, has not, does not, and will not engage in any form of retaliation prohibited under Chapter 447, F.S. for an employee exercising his or her right to be a member of either the Coastal PBA or IUPA, or any union whatsoever, or to be a non-member.

Sincerely,

Chief Thomas Grimaldi  
Chief of Police  
Port Orange Police Department





## Basis of Charge

1. The Coastal Florida Police Benevolent Association, Inc. (hereinafter “Coastal PBA”) is the certified collective bargaining representative for the bargaining unit of Police Officers employed by the City of Port Orange (hereinafter “Employer”), to work in the City of Port Orange Police Department, in the rank of Sergeant and below. Public Employees Relations Commission Certification # 326.
2. Charging Parties Gregory Cook and Justin White (hereinafter “Charging Parties”) are both currently, and were at all times relevant hereto, employed as Police Officers by Employer to work in the City of Port Orange Police Department, and they are both members of the bargaining unit referenced in Paragraph 1 immediately above.
3. The Charging Parties submit that they are unsatisfied with the lack of representation provided by the Coastal PBA to their bargaining unit in part because Coastal PBA is an employer-assisted/dominated labor union. Charging Parties have exercised their right to join a minority union, International Union of Police Associations, AFL-CIO (“IUPA”). Approximately 19 of Charging Parties’ fellow-bargaining unit members have joined IUPA as well.
4. According to the currently effective collective bargaining agreement (“CBA”) between Coastal PBA and Employer, Article 22, the Coastal PBA “...shall be represented by its President or his designee.” *Id.* CBA attached hereto as “Exhibit A.”
5. The President of the Coastal PBA is neither an Officer nor a Sergeant. She is not even a member of the two (2) bargaining units for which the Coastal PBA is the certified collective bargaining representative.<sup>1</sup> Instead, the Coastal PBA President, Kimberly Kilpatrick, is a Commander/Captain in the Port Orange Police Department. Based on her position and duties, Commander/Captain Kilpatrick is a managerial employee and agent of the Employer who has an impermissible conflict of interest with the employees in the Officers’ and Sergeants’ bargaining unit.
6. In PERC case *Coastal Florida Police Benevolent Association v. City of Port Orange*, a representation certification case, Port Orange Police Department Commanders/Captains were deemed managerial. 34 FPER ¶ 67 (2008). Prior to receiving the managerial distinction, the City of Port Orange posted PERC Form 10 (Notice to Employees) to advise the Commanders/Captains that the City and the Coastal PBA are seeking to have them designated as managerial employees. *Id.*
7. Coastal PBA is aware of President Kilpatrick’s status as Commander/Captain. In light of *Coastal Florida Police Benevolent Association v. City of Port Orange*, Coastal PBA is also aware of Commander/Captain Kilpatrick’s status as a managerial employee and that she is an agent of the Employer; nevertheless, Coastal PBA allows Kilpatrick to continue to serve as Coastal PBA President.

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<sup>1</sup> Coastal PBA also represents a bargaining unit of City of Port Orange employees in the classification of Lieutenant in the Port Orange Police Department. Public Employees Relations Commission Certification #1668.

8. An additional conflict that blurs the lines between employee organization and employer: Commander/Captain Kilpatrick is also an agent of the Chief of Police based on her role as a member of the Port Orange Police Department Disciplinary Review Board. This Board "...shall serve as an advisory board to the Chief of Police in matters involving discipline and discharge." Port Orange Police Department, Policy and Procedure Directive, Disciplinary Process, 26.4.89, attached hereto as "Exhibit B," and incorporated herein.
9. Thus, when the Chief of Police calls upon the Disciplinary Review Board to review a matter up for discipline/discharge in regard to the bargaining unit of Officers and Sergeants, Commander/Captain Kilpatrick is charged with providing the Chief with a written recommendation as to "...the final disposition of each allegation and proposed penalty...." *Id.*
10. At the time that Kilpatrick was promoted to Commander/Captain, on or about October 18, 2016, the Employer knew that Kilpatrick was the president of the Coastal PBA. As a managerial employee, Commander/Captain is an "at will" employee who serves at the pleasure of the Employer – which is further motivation to advance the interests of the Employer as compared to the Officers' and Sergeants' bargaining unit.
11. In addition to Commander/Captain Kilpatrick's inappropriate assistance as an agent of the Employer in the administration of Coastal PBA, the Coastal PBA's Treasurer and Secretary is Port Orange Police Department Lieutenant Eric Fisher, who is also an investigator in Internal Affairs – which investigates allegations against Officers and Sergeants that could lead to disciplinary action.
12. Despite this conflict of interest, Lieutenant Eric Fisher is presently negotiating the successor CBA between the Coastal PBA and the City of Port Orange for the Officers and Sergeant's bargaining unit. The most recent negotiation session was on August 18, 2017. Lieutenant Fisher also negotiates the CBA for the Port Orange Lieutenant's bargaining unit. Lieutenant Fisher cannot be fully loyal to the Officers/Sergeants bargaining unit and reaching the best deal for the Officers/Sergeants bargaining unit – one that does not directly affect him – while serving as the negotiator for the Lieutenant's CBA, which directly affects him. Lieutenant Fisher is one (1) of approximately three (3) negotiators for Coastal PBA, who is currently negotiating the successor agreement, and he often takes the lead at negotiations.
13. Also, Lieutenant Fisher is inappropriately involved in leading Coastal PBA membership meetings for the Officers'/Sergeants' bargaining unit.
14. Likewise, Coastal PBA Representative Evan Doyle is an agent of the Chief of Police in serving as his Community Relations and Public Information Officer ("PIO"). PIO Doyle was appointed by the Chief of Police to this position. PIO Doyle is also a Coastal PBA negotiator, who is presently negotiating the successor CBA for the Officers' and

Sergeants' bargaining unit, which is a conflict of interest since PIO Doyle is an agent of the Employer. PIO Doyle and Lieutenant Fisher make up two-thirds of Coastal PBA's negotiation team, presently negotiating the successor CBA for the Officers' and Sergeant's bargaining unit. PIO Doyle is inappropriately involved in the affairs of Coastal PBA, including his involvement in Coastal PBA administration and membership meetings.

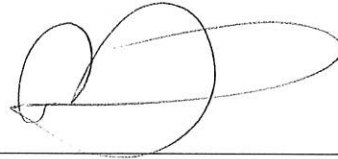
15. Both Commander/Captain Kilpatrick and Lieutenant Fisher are part of the Coastal PBA leadership that decides whether or not an Officer's or Sergeant's grievance, under the CBA, will actually be filed/presented to the Employer.
16. The Employer is aware, and at all times relevant hereto, has been aware of Commander/Captain Kilpatrick, Lieutenant Fisher, and PIO Doyle's positions and roles with Coastal PBA. Likewise, at all times relevant hereto, Coastal PBA is and was aware of Kilpatrick, Fischer and Doyle's job titles/positions with the Employer.
17. According to Fla. Stat. §447.501(2)(a), Coastal PBA or anyone acting in its behalf or its officers, representatives, agents, or members are prohibited from: "Interfering with, restraining, or coercing public employees in the exercise of any rights guaranteed them under this part...." *Id.*
18. By and through the above-described actions, Coastal PBA knowingly allowed the usual clear demarcation between public employer and employee organization to be blurred. "One of the most fundamental precepts of labor law is the necessity for maintaining the independence of the organization seeking to represent employees from the influence of the employer." *Broward County Sheriff's Department*, 9 FPER ¶ 14044 (1982). Coastal PBA has a duty to maintain this independence from employer influence and knowingly failed and continues to fail to maintain this independence, which "...interferes with the rights of the public employees [including but not limited to the Charging Parties] involved to have this distinction maintained by the employee organization seeking to represent them." *Id.*
19. Thus, Coastal PBA has and is interfering with, restraining, or coercing public employees in the exercise of any rights guaranteed them under Part II of Chapter 447, Florida Statutes. In doing so, the Coastal PBA violated Charging Parties' rights under Fla. Stat. §§447.501(2)(a).
20. The Charging Parties demand that the Coastal PBA's offending conduct cease, that the current Coastal PBA President, Commander/Captain Kilpatrick, PIO Doyle and Lieutenant Fisher be removed from Union office; that collective bargaining negotiations cease until PIO Doyle and Lieutenant Fisher are replaced by negotiators who do not have a conflict of interest with the bargaining unit; and for any further relief that PERC deems appropriate.
21. The Coastal PBA knew or should have known that its actions were unlawful. *See Broward County Sheriff's Department*, 9 FPER ¶ 14044 (1982). The Charging Parties

therefore demand an order of the attorney's fees and costs associated with this proceeding.



**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that the foregoing has been filed with PERC and that a copy of the foregoing has been simultaneously sent via U.S. Mail to: Jake Johansson, City Manager, City of Port Orange, FL at 1000 City Center Circle, Port Orange, FL 32129, and Mr. Greg Forhan, Costal Florida Police Benevolent Association, 810 Fentress CT, Suite 150, Daytona Beach, FL 32117 this 22nd day of August, 2017.



By: \_\_\_\_\_

Holly Van Horsten, Esq.

## **AFFIDAVIT OF GREGORY COOK**

Before me, the undersigned authority appeared, Gregory Cook, who upon being duly sworn did state as follows:

1. I have been employed as a law enforcement officer by the Port Orange Police Department/City of Port Orange since December 15, 2008. I currently work as a Canine Officer with the City of Port Orange.

2. I have personal knowledge of the information in this Affidavit.

3. As a Police Officer in the City of Port Orange, I am a member of the bargaining unit of Police Officers, Police Corporals, Police Sergeants, Detectives and Dispatchers. The Coastal Florida Police Benevolent Association ("Coastal PBA") is the certified collective bargaining representative of the bargaining unit that I am a member of. Coastal PBA is also the certified bargaining representative of the bargaining unit of Lieutenants in the Port Orange Police Department. Police Department employees who are at the rank of Captain and above are not unionized.

4. In exercising my constitutional rights in regard to union membership, I am not presently a member of Coastal PBA. This is because I am unsatisfied with the lack of representation provided by the Coastal PBA to my bargaining unit, and because Coastal PBA is an employer-dominated union. Instead, I have joined a minority union, International Union of Police Associations, AFL-CIO ("IUPA"). Approximately 19 of my fellow-bargaining unit members have joined IUPA as well.

5. The President of the Coastal PBA is neither an Officer nor a Sergeant. She is not even a member of the two (2) bargaining units for which the Coastal PBA is the certified collective bargaining representative. Instead, the Coastal PBA President, Kimberly Kilpatrick, is a Commander/Captain in the Port Orange Police Department. Based on her position and duties,

Captain Kilpatrick is an agent of the Employer, and has an impermissible conflict of interest with the bargaining unit.

6. According to the currently collective bargaining agreement (“CBA”) between Coastal PBA and the City of Port Orange, Article 22, the Coastal PBA “...shall be represented by its President or his [*sic*] designee.” *Id.* CBA attached hereto as “Exhibit A.”

7. Captain Kilpatrick is also an agent of the Chief of Police based on her role on the Port Orange Police Department Disciplinary Review Board. This Board “...shall serve as an advisory board to the Chief of Police in matters involving discipline and discharge.” Port Orange Police Department, Policy and Procedure Directive, Disciplinary Process, 26.4.89, attached hereto as “Exhibit B.”

8. The Procedure in regard to the Disciplinary Review Board also states as follows:

26.4.90 The Board shall be made up of three Commanders/Captains, but a Lieutenant may be substituted in the unavoidable absence of a Commander/Captain. A chairman will be selected by consensus. The chairman will set procedures and preside over the inquiry.

26.4.91 The Chief of Police may attend the board presentations as an observer but will not participate in the deliberations.

26.4.92 The internal affairs investigator shall present the facts of the case to the Board. The investigator may bring witnesses and evidence to the Board when appropriate.

26.4.93 The Board may question witnesses, the individual charged, and the internal affairs investigator. The Board is empowered to request additional evidence, witnesses, or a broadened investigation. The Board may call for a recess to await additional requested information.

26.4.94 The individual charged and his/her representative may attend the presentations to the Board. After full presentation by the investigator, the person charged or his/her representative may rebut and make a presentation to the Board.

26.4.95 The board is an advisory, administrative and fact-finding endeavor and the Chairman of the Board has wide discretion in setting procedures for this

inquiry. The chairman has a right to end the Review Board at anytime he deems appropriate.

26.4.96 Board Members will deliberate separately at the conclusion of its inquiry.

26.4.97 Each board member will provide a written recommendation to the Chief as to the final disposition of each allegation and proposed penalty within three (3) working days of the conclusion of the review.

9. Thus, when the Chief of Police calls upon the Disciplinary Review Board to review a matter up for discipline/discharge Captain Kilpatrick is charged with providing the Chief with a written recommendation as to "...the final disposition of each allegation and proposed penalty..." *Id.*

10. In addition to Captain Kilpatrick's inappropriate assistance as an agent of the Employer in the administration of Coastal PBA, the Coastal PBA's Treasurer and Secretary is Port Orange Police Department Lieutenant Eric Fisher, who is also an investigator in Internal Affairs – which investigates allegations against Officers and Sergeants that could lead to disciplinary action.

11. Despite this conflict of interest, Lieutenant Eric Fisher is presently negotiating the successor CBA between the Coastal PBA and the City of Port Orange for the Officers and Sergeant's bargaining unit. . The most recent negotiation session was on August 18, 2017. Lieutenant Fisher also negotiates the CBA for the Port Orange Lieutenant's bargaining unit. Lieutenant Fisher cannot be fully loyal to the Officers/Sergeants bargaining unit and reaching the best deal for the Officers/Sergeants bargaining unit – one that does not directly affect him – while he is simultaneously negotiating the Lieutenant's CBA, which directly affects him. Lieutenant Fisher is 1 of only approx. 3 negotiators for Coastal PBA, who is currently negotiating the successor agreement, and he takes the lead at negotiations. Lieutenant Fisher is also the only negotiator for Coastal PBA of the Lieutenants bargaining unit's successor CBA.

12. Also, Lieutenant Fisher is inappropriately involved in leading Coastal PBA membership meetings for the Officers'/Sergeants' bargaining unit.

13. Likewise, Coastal PBA Representative Evan Doyle is an agent of the Chief of Police in serving as his Community Relations and Public Information Officer ("PIO"). PIO Doyle was appointed by the Chief of Police to this position. PIO Doyle is also a Coastal PBA negotiator, who is presently negotiating the successor CBA for the Officers' and Sergeants' bargaining unit, which is a conflict of interest since PIO Doyle is an agent of the Employer. PIO Doyle and Lieutenant Fisher make up two-thirds of Coastal PBA's negotiation team, presently negotiating the successor CBA for the Officers' and Sergeant's bargaining unit. PIO Doyle is inappropriately involved in the affairs of Coastal PBA, including his involvement in Coastal PBA administration and membership meetings.

14. Both Captain Kilpatrick and Lieutenant Fisher are part of the Coastal PBA leadership that decides whether or not an Officer's or Sergeant's grievance, under the CBA, will actually be filed/presented to the Employer.

15. The City of Port Orange/Port Orange Police Department is and has been aware of Captain Kilpatrick, Lieutenant Fisher, and PIO Doyle's roles with Coastal PBA. The Employer knew that Kilpatrick was President of the Coastal PBA when Kilpatrick was promoted to the managerial position of Commander/Captain on or about October 18, 2016.

16. The Port Orange Officers and Sergeants bargaining unit is not being appropriately represented by Coastal PBA, and successor contract negotiations should stop until PIO Doyle and Lieutenant Fisher are replaced by negotiators who do not have a conflict of interest with the bargaining unit.

Greg Cook  
Greg Cook

8-17-17  
Date

Sworn to and subscribed before me on this  
17<sup>th</sup> day of August, 2017  
Notary Public Pamela A. Peerless



PAMELA A. PEERLESS  
MY COMMISSION # FF 963148  
EXPIRES: February 29, 2020  
Bonded Thru Budget Notary Services

STATE OF FLORIDA  
PUBLIC EMPLOYEES RELATIONS COMMISSION  
4708 Capital Circle N.W., Suite 300  
Tallahassee, Florida 32303  
(850) 488-8641

Do Not Write In This Box

CASE NUMBER

CA-

DATE FILED

CHARGE AGAINST EMPLOYER

INSTRUCTIONS:

Submit an original and one (1) copy of this charge to the Public Employees Relations Commission along with proof of simultaneous service upon the other parties. (NOTE: Pursuant to Florida Administrative Code Rule 60CC-5.001(5), the charge must be accompanied by sworn statements(s) setting forth facts of which the affiant has personal knowledge, and where applicable, documentary evidence sufficient to support a prima facie violation of the applicable unfair labor practice provision(s). Such supporting evidence is not to be attached to the charge and is to be furnished only to the Commission.)

The Charging Party alleges that the public employer or its agents named below have engaged in (an) unfair labor practice(s). Charging Party requests the Public Employees Relations Commission to process this charge under its proper authority.

1. NAME OF CHARGING PARTY: Gregory Cook and Justin White  
Phone No. 954-960-3257 Facsimile(Fax) No. 754-200-8802  
Address: 900 S. State Rd. 7, Plantation, FL 33317  
Zip Code

2. CHARGING PARTY REPRESENTATIVE: Holly Van Horsten, Esq.  
Title: Attorney  
Phone No. 954-960-3257 Facsimile(Fax) No. 754-200-8802  
Address: 900 S. State Rd. 7, Plantation, FL 33317  
Zip Code

3. NAME OF EMPLOYER: City of Port Orange  
Address: 1000 City Center Circle, Port Orange, FL 32129  
Zip Code

4. EMPLOYER REPRESENTATIVE: Jake Johansson  
Title: City Manager  
Phone No. 386-506-5501 Facsimile(Fax) No. 386-506-5711  
Address: 1000 City Center Circle, Port Orange, FL 32129  
Zip Code

5. The above-named employer or its agents has (have) engaged in (an) unfair labor practice(s) within the meaning of Section 447.501(1)(a) and 447.501(1)(e), Florida Statutes.  
(list sections)





## Basis of Charge

1. The Coastal Florida Police Benevolent Association, Inc. (hereinafter “Coastal PBA”) is the certified collective bargaining representative for the bargaining unit of Police Officers employed by the City of Port Orange (hereinafter “Employer”), that work in the City of Port Orange Police Department, in the rank of Sergeant and below. Public Employees Relations Commission Certification # 326.
2. Charging Parties Gregory Cook and Justin White (hereinafter “Charging Parties”) are both currently, and were at all times relevant hereto, employed as Police Officers by Employer to work in the City of Port Orange Police Department, and they are both members of the bargaining unit referenced in Paragraph 1 immediately above.
3. The Charging Parties submit that they are unsatisfied with the lack of representation provided by the Coastal PBA to their bargaining unit in part because Coastal PBA is an employer-assisted/dominated labor union. Charging Parties have exercised their right to join a minority union, International Union of Police Associations, AFL-CIO (“IUPA”). Approximately 19 of Charging Parties’ fellow-bargaining unit members have joined IUPA as well.
4. According to the currently effective collective bargaining agreement (“CBA”) between Coastal PBA and Employer, Article 22, the Coastal PBA “...shall be represented by its President or his designee.” *Id.* CBA attached hereto as “Exhibit A.”
5. The President of the Coastal PBA is neither an Officer nor a Sergeant. She is not even a member of the two (2) bargaining units for which the Coastal PBA is the certified collective bargaining representative.<sup>1</sup> Instead, the Coastal PBA President, Kimberly Kilpatrick, is a Commander/Captain in the Port Orange Police Department. Based on her position and duties, Commander/Captain Kilpatrick is a managerial employee and agent of the Employer who has an impermissible conflict of interest with the employees in the Officers’ and Sergeants’ bargaining unit.
6. In PERC case *Coastal Florida Police Benevolent Association v. City of Port Orange*, a representation certification case, Port Orange Police Department Commanders/Captains were deemed managerial. 34 FPER ¶ 67 (2008). Prior to receiving the managerial distinction, the City of Port Orange posted PERC Form 10 (Notice to Employees) to advise the Commanders/Captains that the City and the Coastal PBA are seeking to have them designated as managerial employees. *Id.*
7. An additional conflict that blurs the lines between employee organization and employer: Commander/Captain Kilpatrick is also an agent of the Chief of Police based on her role as a member of the Port Orange Police Department Disciplinary Review Board. This Board “...shall serve as an advisory board to the Chief of Police in matters involving discipline and discharge.” Port Orange Police Department, Policy and Procedure

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<sup>1</sup> Coastal PBA also represents a bargaining unit of City of Port Orange employees in the classification of Lieutenant in the Port Orange Police Department. Public Employees Relations Commission Certification #1668.

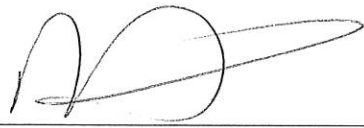
Directive, Disciplinary Process, 26.4.89, attached hereto as “Exhibit B,” and incorporated herein.

8. Thus, when the Chief of Police calls upon the Disciplinary Review Board to review a matter up for discipline/discharge in regard to the bargaining unit of Officers and Sergeants, Commander/Captain Kilpatrick is charged with providing the Chief with a written recommendation as to “...the final disposition of each allegation and proposed penalty....” *Id.*
9. At the time that Kilpatrick was promoted to Commander/Captain, the Employer knew that Kilpatrick was the president of the Coastal PBA. As a managerial employee, Commander/Captain is an “at will” employee who serves at the pleasure of the Employer – which is further motivation to advance the interests of the Employer as compared to the Officers’ and Sergeants’ bargaining unit.
10. In addition to Commander/Captain Kilpatrick’s inappropriate assistance as an agent of the Employer in the administration of Coastal PBA, the Coastal PBA’s Treasurer and Secretary is Port Orange Police Department Lieutenant Eric Fisher, who is also an investigator in Internal Affairs – which investigates allegations against Officers and Sergeants that could lead to disciplinary action.
11. Despite this conflict of interest, Lieutenant Eric Fisher is presently negotiating the successor CBA between the Coastal PBA and the City of Port Orange for the Officers and Sergeant’s bargaining unit. The most recent negotiation session was on August 18, 2017. Lieutenant Fisher also negotiates the CBA for the Port Orange Lieutenant’s bargaining unit. Lieutenant Fisher cannot be fully loyal to the Officers/Sergeants bargaining unit and reaching the best deal for the Officers/Sergeants bargaining unit – one that does not directly affect him – while serving as the negotiator for the Lieutenant’s CBA, which directly affects him. Lieutenant Fisher is one (1) of approximately three (3) negotiators for Coastal PBA, who is currently negotiating the successor agreement, and he often takes the lead at negotiations.
12. Also, Lieutenant Fisher is inappropriately involved in leading Coastal PBA membership meetings for the Officers’/Sergeants’ bargaining unit.
13. Likewise, Coastal PBA Representative Evan Doyle is an agent of the Chief of Police in serving as the Chief’s Community Relations and Public Information Officer (“PIO”). PIO Doyle was appointed by the Chief of Police to this position. PIO Doyle is also a Coastal PBA negotiator, who is presently negotiating the successor CBA for the Officers’ and Sergeants’ bargaining unit, which is a conflict of interest since PIO Doyle is an agent of the Employer. PIO Doyle and Lieutenant Fisher make up approximately two-thirds of Coastal PBA’s negotiation team, presently negotiating the successor CBA for the Officers’ and Sergeant’s bargaining unit. PIO Doyle is inappropriately involved in the affairs of Coastal PBA, including his involvement in Coastal PBA administration and membership meetings.

14. Both Commander/Captain Kilpatrick and Lieutenant Fisher are part of the Coastal PBA leadership that decides whether or not an Officer's or Sergeant's grievance, under the CBA, will actually be filed/presented to the Employer.
15. The Employer is aware, and at all times relevant hereto, has been aware of Commander/Captain Kilpatrick, Lieutenant Fisher, and PIO Doyle's positions and roles with Coastal PBA. The Employer knew that Kilpatrick was President of the Coastal PBA when Kilpatrick was promoted to the managerial position of Commander/Captain on or about October 18, 2016.
16. The Port Orange Officers and Sergeants bargaining unit is not being appropriately represented by Coastal PBA, and successor contract negotiations should stop until PIO Doyle and Lieutenant Fisher are replaced by negotiators who do not have a conflict of interest with the bargaining unit.
17. According to Fla. Stat. §447.501(1)(a), "Public employers or their agents or representatives are prohibited from: Interfering with, restraining, or coercing public employees in the exercise of any rights guaranteed them under this part." *Id.*
18. According to Fla. Stat. §447.501(1)(e), "Public employers or their agents or representatives are prohibited from: Dominating, interfering with, or assisting in the formation, existence, or administration of, any employee organization or contributing financial support to such an organization." *Id.*
19. By and through the above-described actions, the Employer is dominating, interfering with or assisting in the formation, existence, or administration of the Coastal PBA or is contributing financial support to the Coastal PBA. These actions also interfere with, restrain, or coerce public employees in the exercise of their right guaranteed to them under Part II of Chapter 447, Florida Statutes. In doing so, the Employer violated Fla. Stat. §§447.501(1)(a) and (e).
20. The Charging Parties demand that the Employer's offending conduct cease, that the current Coastal PBA President, Commander/Captain Kilpatrick, PIO Doyle and Lieutenant Fisher be removed from Union office, that collective bargaining negotiations cease until PIO Doyle and Lieutenant Fisher are replaced by negotiators who do not have a conflict of interest with the bargaining unit, and for any further relief that PERC deems appropriate.
21. The Employer knew or should have known that its actions were unlawful. *See Broward County Sheriff's Department*, 9 FPER ¶ 14044 (1982). The Charging Parties therefore demand an order of the attorney's fees and costs associated with this proceeding.

**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that the foregoing has been filed with PERC and that a copy of the foregoing has been simultaneously sent via U.S. Mail to: Jake Johansson, City Manager, City of Port Orange, FL at 1000 City Center Circle, Port Orange, FL 32129, and Mr. Greg Forhan, Costal Florida Police Benevolent Association, 810 Fentress CT, Suite 150, Daytona Beach, FL 32117 this 22nd day of August, 2017.

By:   
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Holly Van Horsten, Esq.

## AFFIDAVIT OF GREGORY COOK

Before me, the undersigned authority appeared, Gregory Cook, who upon being duly sworn did state as follows:

1. I have been employed as a law enforcement officer by the Port Orange Police Department/City of Port Orange since December 15, 2008. I currently work as a Canine Officer with the City of Port Orange.
2. I have personal knowledge of the information in this Affidavit.
3. As a Police Officer in the City of Port Orange, I am a member of the bargaining unit of Police Officers, Police Corporals, Police Sergeants, Detectives and Dispatchers. The Coastal Florida Police Benevolent Association ("Coastal PBA") is the certified collective bargaining representative of the bargaining unit that I am a member of. Coastal PBA is also the certified bargaining representative of the bargaining unit of Lieutenants in the Port Orange Police Department. Police Department employees who are at the rank of Captain and above are not unionized.
4. In exercising my constitutional rights in regard to union membership, I am not presently a member of Coastal PBA. This is because I am unsatisfied with the lack of representation provided by the Coastal PBA to my bargaining unit, and because Coastal PBA is an employer-dominated union. Instead, I have joined a minority union, International Union of Police Associations, AFL-CIO ("IUPA"). Approximately 19 of my fellow-bargaining unit members have joined IUPA as well.
5. The President of the Coastal PBA is neither an Officer nor a Sergeant. She is not even a member of the two (2) bargaining units for which the Coastal PBA is the certified collective bargaining representative. Instead, the Coastal PBA President, Kimberly Kilpatrick, is a Commander/Captain in the Port Orange Police Department. Based on her position and duties,

Captain Kilpatrick is an agent of the Employer, and has an impermissible conflict of interest with the bargaining unit.

6. According to the currently collective bargaining agreement (“CBA”) between Coastal PBA and the City of Port Orange, Article 22, the Coastal PBA “...shall be represented by its President or his [*sic*] designee.” *Id.* CBA attached hereto as “Exhibit A.”

7. Captain Kilpatrick is also an agent of the Chief of Police based on her role on the Port Orange Police Department Disciplinary Review Board. This Board “...shall serve as an advisory board to the Chief of Police in matters involving discipline and discharge.” Port Orange Police Department, Policy and Procedure Directive, Disciplinary Process, 26.4.89, attached hereto as “Exhibit B.”

8. The Procedure in regard to the Disciplinary Review Board also states as follows:

26.4.90 The Board shall be made up of three Commanders/Captains, but a Lieutenant may be substituted in the unavoidable absence of a Commander/Captain. A chairman will be selected by consensus. The chairman will set procedures and preside over the inquiry.

26.4.91 The Chief of Police may attend the board presentations as an observer but will not participate in the deliberations.

26.4.92 The internal affairs investigator shall present the facts of the case to the Board. The investigator may bring witnesses and evidence to the Board when appropriate.

26.4.93 The Board may question witnesses, the individual charged, and the internal affairs investigator. The Board is empowered to request additional evidence, witnesses, or a broadened investigation. The Board may call for a recess to await additional requested information.

26.4.94 The individual charged and his/her representative may attend the presentations to the Board. After full presentation by the investigator, the person charged or his/her representative may rebut and make a presentation to the Board.

26.4.95 The board is an advisory, administrative and fact-finding endeavor and the Chairman of the Board has wide discretion in setting procedures for this

inquiry. The chairman has a right to end the Review Board at anytime he deems appropriate.

26.4.96 Board Members will deliberate separately at the conclusion of its inquiry.

26.4.97 Each board member will provide a written recommendation to the Chief as to the final disposition of each allegation and proposed penalty within three (3) working days of the conclusion of the review.

9. Thus, when the Chief of Police calls upon the Disciplinary Review Board to review a matter up for discipline/discharge Captain Kilpatrick is charged with providing the Chief with a written recommendation as to "...the final disposition of each allegation and proposed penalty..." *Id.*

10. In addition to Captain Kilpatrick's inappropriate assistance as an agent of the Employer in the administration of Coastal PBA, the Coastal PBA's Treasurer and Secretary is Port Orange Police Department Lieutenant Eric Fisher, who is also an investigator in Internal Affairs – which investigates allegations against Officers and Sergeants that could lead to disciplinary action.

11. Despite this conflict of interest, Lieutenant Eric Fisher is presently negotiating the successor CBA between the Coastal PBA and the City of Port Orange for the Officers and Sergeant's bargaining unit. . The most recent negotiation session was on August 18, 2017. Lieutenant Fisher also negotiates the CBA for the Port Orange Lieutenant's bargaining unit. Lieutenant Fisher cannot be fully loyal to the Officers/Sergeants bargaining unit and reaching the best deal for the Officers/Sergeants bargaining unit – one that does not directly affect him – while he is simultaneously negotiating the Lieutenant's CBA, which directly affects him. Lieutenant Fisher is 1 of only approx. 3 negotiators for Coastal PBA, who is currently negotiating the successor agreement, and he takes the lead at negotiations. Lieutenant Fisher is also the only negotiator for Coastal PBA of the Lieutenants bargaining unit's successor CBA.



12. Also, Lieutenant Fisher is inappropriately involved in leading Coastal PBA membership meetings for the Officers'/Sergeants' bargaining unit.

13. Likewise, Coastal PBA Representative Evan Doyle is an agent of the Chief of Police in serving as his Community Relations and Public Information Officer ("PIO"). PIO Doyle was appointed by the Chief of Police to this position. PIO Doyle is also a Coastal PBA negotiator, who is presently negotiating the successor CBA for the Officers' and Sergeants' bargaining unit, which is a conflict of interest since PIO Doyle is an agent of the Employer. PIO Doyle and Lieutenant Fisher make up two-thirds of Coastal PBA's negotiation team, presently negotiating the successor CBA for the Officers' and Sergeant's bargaining unit. PIO Doyle is inappropriately involved in the affairs of Coastal PBA, including his involvement in Coastal PBA administration and membership meetings.

14. Both Captain Kilpatrick and Lieutenant Fisher are part of the Coastal PBA leadership that decides whether or not an Officer's or Sergeant's grievance, under the CBA, will actually be filed/presented to the Employer.

15. The City of Port Orange/Port Orange Police Department is and has been aware of Captain Kilpatrick, Lieutenant Fisher, and PIO Doyle's roles with Coastal PBA. The Employer knew that Kilpatrick was President of the Coastal PBA when Kilpatrick was promoted to the managerial position of Commander/Captain on or about October 18, 2016.

16. The Port Orange Officers and Sergeants bargaining unit is not being appropriately represented by Coastal PBA, and successor contract negotiations should stop until PIO Doyle and Lieutenant Fisher are replaced by negotiators who do not have a conflict of interest with the bargaining unit.



Greg Cook  
Greg Cook

8-17-17  
Date

Sworn to and subscribed before me on this  
17<sup>th</sup> day of August, 2017  
Notary Public Pamela A. Peerless



PAMELA A. PEERLESS  
MY COMMISSION # FF 963148  
EXPIRES: February 29, 2020  
Bonded Thru Budget Notary Services