>> THE SUPREME COURT IS NOW IN
SESSION.
PLEASE BE SEATED IS THE NEXT
CASE ON THE DOCKET AND THE LAST
ON THE DOCKET TODAY IT IS WALTER
E. HEADLEY, JR. ET AL. V. CITY
OF MIAMI, FLORIDA.
COUNCIL?
>> GOOD MORNING, MAY IT PLEASE
THE COURT, AND I AM ROBERT
KLAUSNER AND WITH ME
IS ROBERT COEN OF MIAMI LODGE
20.
4474095 ALLOW THE CITY OF MIAMI
USING AN STATURES ORALLY
UNDEFINED STANDARD TO IN PERNOD
ONE BUT TWO CONSTITUTIONAL
RIGHTS WITHIN OUR DECLARATION OF
RIGHTS FOR AN INDEFINITE PERIOD
OF TIME.
>> WHAT STATUTE DID YOU SAY?
>> 447.4095.
>> YOU BELIEVE THAT STATUTE
ALLOWS THE CITY TO DO WHAT THE
CITY DID?
>> NO, IT DOESN'T BUT THAT IS
WHAT THE FIRST D.C. A ALLOWED
THEM TO DO BECAUSE IT DIDN'T
FOLLOW THE STANDARD THAT YOU SET
IN TRIALS AND THAT IS WHY THE
FIRST ONE IS WRONG AND THE
FOURTH DC-8 IS CORRECT.
>> ISN'T IT A PROBLEM IN THE
ANALYSIS THAT THIS STATUTE
ACTUALLY WAS ENACTED BY THE
LEGISLATURE?
AFTER CHILES?
>> I DON'T THINK THAT CREATES A
PROBLEM IN THE ANALYSIS.
>> WHY ISN'T THIS STATUTE, PART
OF THE LEGAL BACKGROUND, THAT WE
HAVE TO UNDERSTAND THESE
COLLECTIVE BARGAINING AGREEMENTS
SUCH THAT IN EFFECT THIS THAT
PROVISION IS AN IMPLIED TERM OF
THOSE AGREEMENTS?
SO FAR AS AN IMPAIRMENT OF
OBLIGATION OF CONTRACTS IT SEEMS
TO ME THAT THE FACT THE STATUTE
IS FAIR AND YOU KNOW THAT

WHATEVER RIGHTS THE GOVERNMENT
IS GOING TO HAVE UNDER THAT
STATUTE IS GOING TO HAVE UNDER
THAT STATUTE IS THERE.
THAT IS PART OF THE FRAMEWORK
WITHIN WHICH THE AGREEMENTS ARE
ENTERED, I DON'T UNDERSTAND HOW
YOU CAN CLAIM IMPAIRMENT OF
CONTRACT BASED ON THAT STATUTES.
YOU MAY DISAGREE ABOUT WHAT THE
STATUTE MEANS, THAT IS A
DIFFERENT ISSUE.
BUT ON THE POINT, WHY WOULD I BE
WRONG IN SEEING THE STATUTE TO
BE AN IMPLIED TERM OF THE
AGREEMENT?
>> LEGISLATURE CANNOT WRITE A
LAW THAT CREATES AN IMPLIED TERM
OF CONTRACT VIOLATES THE
CONSTITUTION.
THE RIGHT TO BARGAIN
COLLECTIVELY IS FUNDAMENTAL.
IT IS ON THE SAME LEVEL AS
SPEECH, RELIGION, AND PUBLIC
RECORDS AND EVERY OTHER RIGHT
WHICH IS IN OUR DECLARATION OF
RIGHTS.
>> THAT IS ADDRESSING THE CLAIM
BASED ON THEIR RIGHT TO BARGAIN
COLLECTIVELY.
THAT IS NOT ADDRESSING THE
IMPAIRMENT OF CONTRACT.
>> I UNDERSTAND.
LET'S TALK IMPAIRMENT OF
CONTRACT.
AS RECENTLY AS LAST YEAR YOU
SAID A PRIVATE SERVICE
CORPORATION HAS THE RIGHT TO BE
FREE FROM THE IMPAIRMENT OF
CONTRACT.
WE ARE A PRIVATE SERVICE CORP.
WE ARE TRADE UNIONS SO WE ARE
ENTITLED TO TO NOT HAVE OUR
CONTRACT IMPAIRED THE SAME AS
ANYBODY ELSE AND WHAT YOU SAID
IS THE LEGISLATURE IN REGULATING
COLLECTIVE BARGAINING CAN GO
ONLY SO FAR.
WHENEVER A LAW IMPACTS AS THIS
DOES ON A FUNDAMENTAL

CONSTITUTIONAL RIGHT, ACCORDING
TO THE COURT, AND
CONSTITUTIONAL.
THE LEGISLATURE TRIED TO
RESTRICT BARGAINING OVER
PENSIONS, YOU SAID YOU CANNOT DO
THAT BECAUSE THEIR EXTENSIVE
WITH THE PRIVATE SECTOR EXCEPT
FOR THE RIGHT TO STRIKE.
THEY TRY TO -- AT ONE POINT
DEPUTY SHERIFFS AND SUPPORTS
CLERKS WERE NOT ALLOWED TO
UNIONIZE.
YOU TREATED FROM A DECISION
RECOGNIZING THAT THAT PREVENTED
THEIR CONTRACT RIGHTS FROM BEING
RESPECTED.
THE ISSUE HERE IS THE
LEGISLATURE AS THE STATUTE HAS
BEEN APPLIED TO, AND PUBLIC
EMPLOYERS AND CITIES BOUND BY
THEIR CONTRACTS LIKE EVERYBODY
ELSE, IF IT DECIDES THERE IS THE
FINANCIALLY URGENT SITUATION
BETWEEN EVERYTHING IS FINE AND A
FINANCIAL EMERGENCY UNDER
CHAPTER 218, WE WRITE THE
CONTRACT.
WE CAN USE LEGISLATIVE POWER TO
REWRITE THE CONTRACT.
>> LET'S LOOK AT THE STATUTE OF
YOU TAKING EACH YOU, THE STATUTE
ALLOWS FOR THE CITY IN THIS
INSTANCE TO DECLARE FINANCIAL
URGENCY, CORRECT?
>> YES, MAN.
>> LET'S ASSUME THERE IS NO
PROBLEM WITH THAT, THAT THE CITY
CAN IN FACT DO THAT.
THEN THE STATUTE GOES ON TO
REQUIRE --
>> GOES ON TO REQUIRE A LIMITED
BARGAINING PERIOD.
THERE IS A WAY TO READ THE
STATUTES WITHOUT HAVING TO
DECIDE THE CONSTITUTIONAL
QUESTION.
THE STATUTE COULD BE READ
CONSTITUTIONALLY BY FOLLOWING
ITS PLAIN LANGUAGE.

HERE IS WHAT IT SAYS.
OF FINANCIAL URGENCY, THE
PARTIES HAVE TWO WEEK TO RESOLVE
WHATEVER AFFECT THAT WILL HAVE
ON THEIR CONTRACT AND THEN IF
YOU STILL HAVE A DISPUTE YOU GO
TO WHAT THE LEGISLATURE SAID
WHICH IS THE END POINT OF
COLLECTIVE BARGAINING WHICH THE
IMPASSE RESOLUTION PROCESS UNDER
3095.
>> THE ARGUMENT IS ONCE THE
IMPASSE WAS DECLARED AFTER THE
14 DAY PERIOD, THE CITY THAN HAD
TO GO TO THE IMPASSE RESOLUTION
PROCESS AS OPPOSED TO WHAT THEY
DID WHICH WAS INSTITUTED
CHANGES.
THOUGH THE STATUTE, THERE REALLY
ISN'T A PROBLEM WITH THE
STATUTE, IT IS THE COURT'S
INTERPRETATION.
>> THAT IS CORRECT.
WE ALWAYS LOOK AS THE COURT HAS
SAID MANY TIMES TO INTERPRET THE
ACTS OF THE LEGISLATURE AS
CONSTITUTIONAL.
AS IT WAS APPLIED BY THE FIRST
DISTRICT IT IMPAIRS FUNDAMENTAL
CONSTITUTIONAL RIGHTS.
IF YOU READ THE STATUTE BY ITS
PLAIN LANGUAGE, IT SAYS WE HAVE
AN URGENT SITUATION, WE NEED TO
GET THIS BARGAINING STUFF OVER
WITH MORE QUICKLY AND WITHIN THE
STATUTE THERE IS NO LIMITATION
TO THE TIME THAT BARGAINING
LASTS.
IT IS A REASONABLE PERIOD OF
NEGOTIATIONS.
WHAT THE LEGISLATURE HAS SAID
HERE IS IF YOU THINK YOU ARE
GOING TO BE SHORT OF MONEY YOU
CAN SPEED IT UP LEAVING THE
BARGAINING TO TWO WEEK AND IF
YOU CANNOT MAKE A DEAL YOU GO TO
THIS IMPASSE RESOLUTION PROCESS.
>> IN THE IMPASSE RESOLUTION
PROCESS AS I UNDERSTAND THIS
CITY IS SAYING WE HAVE TO HAVE

THIS RESOLVED BY OCTOBER 1ST
BECAUSE WE HAVE TO HAVE A BUDGET
IN AND ALL OF THAT.
IT IS AUGUST WHEN THE IMPASSE IS
DECLARED.
HOW LONG UNDER THE PROCEDURE
UNDER 403, HOW LONG IS THAT
PROCESS?
>> A COUPLE MONTHS.
IN MY EXPERIENCE TWO TO THREE
MONTHS.
THERE ARE TIME LIMITS FOR
APPOINTING THE MAGISTRATE.
HERE IS THE DIFFERENCE.
UNDER 4095 IF THE CITY GETS TO
DO WHAT IT DID IS ACTING AS AN
ADVOCATE TO JUST EXTRICATE
ITSELF FROM ITS CONTRACT WHICH
UNDER THE CONTRACT THIS COURT
HAS DECIDED, IN FACT EVEN
EARLIER AS JUDGE PAUL SOME
POINTED IT OUT, JUSTICE KENNEDY
IN HIS DISSENT IN CITRUS
HOSPITAL THAT THE ECB ISSUE OF
IMPAIRMENT OF CONTRACT WAS
SETTLED BY U.S. SUPREME COURT IN
THE 1800s.
WHAT HAPPENS WHEN YOU GO TO THE
IMPASSE RESOLUTION IS THE CITY
COMMISSION IS NO LONGER AN
ADVOCATE.
ACCORDING TO THE STATUTE IS
NEUTRAL AND MUST TAKE INTO
ACCOUNT THE NEEDS OF ITS
EMPLOYEES AND THE NEEDS OF ITS
CITIZENS THAT THAT IS NOT HOW
THEY DO IT HERE.
>> WHY DIDN'T THE COLLECTIVE
BARGAINING AGENT, AS I READ THE
STATUTE 447.03, EITHER PARTY
COULD HAVE INITIATED THE IMPASSE
PROCESS SO WHY NOT THE
COLLECTIVE BARGAINING AGENT
INSTEAD OF LEADING IT TO THE
CITY TO INITIATE?
>> BY THE CITY'S UNILATERAL
ACTION, IT WAS FUTILE BECAUSE
THE CITY SAID WE ARE CANCELING
THE CONTRACT AND CUTTING WAGES
AND ADOPTING -- I AM SORRY.

>> THAT HAPPENS, I AM TRYING TO
REMEMBER THE DAYS.
>> SEPTEMBER '32.
>> SEPTEMBER 31ST IS WHEN THEY
INITIATED THE CHANGES.
>> THE CHANGES.
>> THEY WERE VOTED ON.
>> THEY TOOK EFFECT SEPT. 32.
>> THE IMPASSE WAS DECLARED
AROUND THE MIDDLE OF AUGUST SO I
AM WONDERING NO ONE, NO PARTY
INITIATED THE IN PASS RESOLUTION
UNDER 403 SO DID THE COLLECTIVE
BARGAINING AGENT HAVE AN
OBLIGATION TO DO THAT JUST AS
MUCH AS THE CITY DID?
>> NOT ONCE THE CITY TO
UNILATERAL LEGISLATIVE ACTION.
THE CITY USED ITS LEGISLATIVE
AUTHORITY TO ALTER THE CONTRACT.
THEY CHANGED THE LAW, USE A
POWER WHICH NO ONE ELSE COULD DO
BUT A GOVERNMENT AND THAT IS WHY
WE RESTRICT ITS POWER.
>> YOU AGREED THAT UNDER
CIRCUMSTANCES, THEY HAVE THE
POWER TO DO IT.
CORRECT?
SO ISN'T THE ISSUE FIRST DO YOU
AGREE FINANCIAL URGENCY WHICH IS
IN THE STATUTE, BOTH THE FIRST
DISTRICT AND THE FOURTH DISTRICT
FIND IT AS A DIRE FINANCIAL
CONDITION REQUIRING IMMEDIATE
ATTENTION AND PROMPT AND
DECISIVE ACTION.
NOT NECESSARILY BANKRUPTCY.
THEY YOU AGREE WITH THAT?
>> I DON'T AGREE WITH THE
DEFINITION.
THAT IS WHAT THEY BOTH SAY.
>> THEY AGREE WITH THAT.
THE POINT OF DISAGREEMENT IS
ONCE THERE IS FINANCIAL URGENCY,
A COMPELLING STATE INTERESTS.
THERE HAS TO BE A DETERMINATION
THAT THE FUNDS ARE AVAILABLE
FROM NO OTHER POSSIBLE
REASONABLE SOURCE.
YOU HAVE A SITUATION WHERE YOU

HAVE FIREFIGHTERS, IF YOU DON'T
HAVE THE ABILITY TO FUND THE
TRUCKS WERE THE BASIC, THE
BASICS OF IT YOU MAY NOT HAVE A
REASONABLE SOURCE.
CUTTING WAGES IS THE ONLY
REASONABLE ALTERNATIVE AS
OPPOSED TO ESSENTIAL
GOVERNMENTAL SERVICES.
>> I DISAGREE -- I AM SORRY.
>> YOU ARE SAYING YOU DON'T HAVE
TO LOOK TO THAT BUT THAT IS THE
OTHER REQUIREMENTS.
IN THE FOURTH DISTRICT
DISAGREEING ABOUT.
>> YOU ARE CORRECT.
>> THE HEARING OFFICER, THEY
NEVER LOOKED AT THAT ISSUE.
>> THEY APPLIED THE WRONG
STANDARD.
>> IT WOULD HAVE TO GO BACK FOR
THAT DETERMINATION TO BE MADE
RETROSPECTIVELY.
>> WHAT THE BETTER RESULT WOULD
BE.
>> WAS THAT DETERMINATION MADE?
>> THE HEARING OFFICER OR A PERC
MADE A DETERMINATION THAT AT
THAT TIME FUNDS WERE NOT
AVAILABLE FOR ANY OTHER POSSIBLE
REASONABLE SOURCE.
>> THE INCORRECT STANDARD WAS
USED AND AS YOU SAID IN A STATE
ATTORNEY'S KILLED WHEN USING THE
INCORRECT STATED YOU TILT THE
SCALES OF JUSTICE TO THE
COMPLETE DETRIMENT OF THE PARTY
WHOSE RIGHTS ARE VIOLATED AND
THAT HAPPENED HERE.
>> THE FOURTH DISTRICT IN THEIR
CASE WHAT THEY DID IS DIRECTED
PERC TO THE CHILD STANDARD IN
DETERMINING WHETHER THEY AND --
ENGAGE IN UNFAIR LABOR PRACTICE.
THAT WOULD BE THE NEXT STEP IF
WE DISAGREE WITH THE FIRST
DISTRICT.
>> EXCEPT FOR ONE THING THE CITY
DID.
I AGREE THAT YOU COULD SEND IT

BACK TO PERC WITH INSTRUCTIONS
TO FOLLOW YOUR JUDGMENT BECAUSE
THE FIRST BY A LADY YOUR
PRINCIPLES AND THAT IS WHY YOU
ARE HERE TO SOLVE THESE
DISPUTES, BUT THE CITY DID ONE
THING WHICH PERC CAN'T CURE.
IN THE EXERCISE UNDER THE
FINANCIAL LEGEND SEE STATUE THE
CITY PASSED ORDNANCES CHANGING
THE PENSION CODE.
THEY WOULD NOT HAVE THE
AUTHORITY TO DECLARE THOSE
ORDNANCES UNCONSTITUTIONAL.
IF THE COURT VACATED ALL ACTION
TAKEN BY THE CITY UNDER THE
FINANCIAL URGENCY STATUTE ON
SEPT. 30 OF 2010 AND RETURNED IT
TO PERC WITH INSTRUCTIONS TO
FOLLOW THAT WOULD WORK.
OR YOU COULD VACATE HAD THE AS I
THINK YOU SHOULD.
>> IF YOU DID ACT AND THEN PERC
DECIDED THE ELEMENTS OF FILES
WERE IN FACT PRESENT, WOULDN'T
THAT AFFECT -- I WOULD ASSUME
THAT THE CITY, IF WE SAID WE ARE
AND DOING EVERYTHING THE CITY
WOULD HAVE TO GO BACK TO THE
ORIGINAL COLLECTIVE BARGAINING
AGREEMENT, AND THERE WOULD BE
BACK PAY AND ALL KINDS OF OTHER
THINGS APPLICABLE BUT IF THE
PERC OFFICER EVENTUALLY SAID
THAT THE CITY COULD IN FACT MAKE
THESE CHANGES, HOW WOULD THAT
TAKE EFFECT?
>> IF PERC, IF YOU VACATED ON
THE BASIS OF NOT FOLLOWING
GILES, THESE OTHER STANDARDS, IN
PERC THE ELEMENTS ARE THERE, NO
OTHER REASONABLE SOURCES OF LOW
OBVIOUSLY WE DISPUTE THAT, THEN
THE QUESTION WOULD BE DID THE
CITY ACT CORRECTLY AND IF NOT
THEY COULD REENACT THE ORDNANCES
THEY ENACTED BEFORE BUT YOU
WOULD STILL GO THROUGH THE
IN-RESOLUTION PROCESS AFTER YOU
DID THAT.

THE CITY NEVER WENT THERE.
THE REASON I AM SUGGESTING TO
YOU AND I WOULD LIKE TO FINISH
THIS AND SAVE THE REST OF MY
TIME FOR REBUTTAL, YOU SHOULD
SEND THE PARTIES BACK TO WHERE
THEY WERE ON SEPTEMBER 29TH,
2010.
HERE IS WHAT.
BARGAINING IS ABOUT PEOPLE
MAKING AN AGREEMENT.
BY VACATING WHAT PERC DID
INCORRECTLY, WITH THE
INSTRUCTIONS AND YOU GO BACK TO
THE CITY AND THE UNION AND SAY
WORKING OUT OR GO TO THE IMPASSE
RESOLUTION PROCESS THE CITY
WOULD HAVE THE SAME POWER IN THE
IMPASSE RESOLUTION PROCESS BUT
ONLY FOR ONE YEAR WHEREAS WHAT
HAPPENED HERE IS A MAJOR CHANGE
WITH NO HEARINGS THAT HAS LASTED
45 YEARS TO THE COMPLETE
DETRIMENT OF OUR MEMBERS AND
MORE IMPORTANTLY TO THEIR
CONSTITUTIONAL RIGHTS AND WITH
THE COURT'S PERMISSION I WOULD
LIKE TO SAVE THE REST OF MY
TIME FOR REBUTTAL.
>> MAY IT PLEASE THE COURT.
JOHN GRECO ON BEHALF OF CITY OF
MIAMI.
ALSO PRESIDENT CO-COUNSEL FOR
CITY OF MIAMI.
DAVID MILLER, COUNSEL FOR AMICUS
CURIAE AND CITY OF HOLLYWOOD.
WANT TO START OUT AND SAY THIS
IS NOT CASE ABOUT THE CITY OF
MIAMI AND FRATERNAL ORDER OF
POLICE.
THIS CASE INVOLVES THE CITIZENS
OF MIAMI AS WELL AS OTHER
EMPLOYEES OF THE CITY OF MIAMI
AND THE APPLICATION OF SECTION
447.4095, WHAT WE CALL THE
FINANCIAL URGENCY STATUTE.
REALLY AFFORDED THE CITY AT THE
TIME WHEN IT WAS ON VERGE OF
BANKRUPTCY, ON VERGE OF
FINANCIAL EMERGENCY, TO ADDRESS

THE NEEDS OF ALL THESE GROUPS.
>> SO WHY ISN'T IT A REASONABLE
READING, AS CHILES HAD IT, THAT
BEFORE YOU DO THAT, WHICH IS, IF
YOU SAY, ON THE VERGE OF
BANKRUPTCY.
THAT YOU LOOK AT WHETHER THERE
ARE OTHER REASONABLE SOURCES TO,
TO CUT OTHER PARTS OF THE CITY'S
BUDGET?
HOW MUCH, HOW BIG WAS THE CITY'S
BUDGET AT THE TIME?
>> 500 MILLION.
>> WHAT WAS THE EFFECT OF THE
CUT FOR THE FIREFIGHTERS?
>> THE, WELL, THIS IS, I DON'T
KNOW, THE TWO UNIONS, THERE WERE
FOUR UNIONS.
TWO CHALLENGED IT.
THE OTHER TWO DIDN'T.
THEY ENTERED INTO CONTRACTS.
I DON'T WANT TO JUST DIVIDE THE
$115 MILLION DEFICIT AMONG ALL
THE UNIONS BUT SUFFICE TO SAY IT
WOULD BE A SIGNIFICANT PORTION
OF THE 115 MILLION DEFICIT THE
CITY WAS FACING BY THE TIME IT
HAD TO ENTER INTO A BUDGET.
>> BUT THAT ISSUE, OF HAVING TO
GO THROUGH, WE COULD APPEAR IN
TALLAHASSEE, CALL IT
BUDGET-CUTTING EXERCISES AND
OFTEN TIMES THAT AFFECTS STATE
WORKERS WHO ARE NOT IN THE SAME
SITUATION WITH CONTRACTS.
SO, WHY ISN'T THE, THAT, THERE
IS A COMPELLING STATE INTEREST
WHICH IS, THAT THERE IS A
FINANCIAL URGENCY.
I THINK THE DEFINITION GIVEN BY,
THAT IS ACCEPTED BY BOTH COURTS
SOUNDS LIKE A REASONABLE
DEFINITION.
THAT YOU THEN KNOW BEFORE YOU
CAN GO AND UNILATERALLY CHANGE
A, ONGOING CONTRACT AND CUT OFF
AND CUT OFF AND NOT REQUIRE
COLLECTIVE BARGAINING IN ORDER
TO ALTER THE CONTRACT, THAT YOU
HAVE TO DO BE ABLE TO ESTABLISH

THAT ADDITIONAL CHILES FACTOR?
>> SO YOU'RE ASKING ME DOES
THE ENTIRE TEST THAT WAS
ENUNCIATED BY JUSTICE KOGAN,
IN CHILES APPLY
TO THE ENTIRE STATUTE?
>> I'M ASKING WHETHER THE FOURTH
DISTRICT OPINION WHICH AL PLIES
CHILES, WHY IS WHY IS THAT NOT
BEFORE THERE IS IMPAIRMENT OF
CONTRACT BUT MORE IMPORTANTLY,
AN IMPAIRMENT OF THE RIGHTS TO
COLLECTIVELY BARGAIN THERE HAS
TO BE A COMPELLING STATE
INTEREST, WHAT WE USUALLY SAY
AND NO OTHER REASONABLE
ALTERNATIVE MEANS TO DO IT?
THAT IS WHEN YOU ARE CUTTING A
FUNDAMENTAL RIGHT.
>> EXACTLY.
>> YOU HAVE THOSE TWO PRONGS.
SO THAT SECOND PRONG IS THE
RECOGNITION THAT WITH
FUNDAMENTAL RIGHTS THAT BEFORE
YOU CAN DO IT, YOU'VE GOT TO
SHOW BOTH THINGS?
EXACTLY.
YOUR HONOR.
WE'RE NOT FAR OFF HERE.
WHAT WAS ENUNCIATED BY JUSTICE
KOGAN IN CHILES TOUGH HAVE A
COMPELLING STATE INTEREST.
THE DISTRICT COURT OF APPEALS
SAYS YOU HAVE TO HAVE COMPELLING
STATE INTEREST.
THE CITY TAKES NO ISSUE WITH
THAT WITH OTHER STRICT SCRUTINY
CASES YOU HAVE TO SHOW IT IS
APPLIED IN THE LEAST RESTRICTIVE
WAY.
IN THE CHILES CASE THE WAY IT
WAS ARTICULATED, I WILL EXPLAIN,
THE CONTEXT OF CHILES AND, THE
SECTION HAD-- 447.4095.
WHAT JUSTICE KOGAN SAID IN THE
APPLICATION OF THE SECOND PART,
THERE WOULD BE NO OTHER
REASONABLE SOURCES, NO OTHER
REASONABLE WAYS TO PRESERVE THE
CONTRACT.

AND, THE COURT--
>> NO.
WELL THE WAY, AT LEAST I'M
LOOKING NOW AT THE FOURTH
DISTRICT CASE THAT THE FUNDS ARE
NOT AVAILABLE FROM NO OTHER
REASONABLE SOURCE.
>> THAT IS SECOND PRONG.
>> THAT IS DIFFERENT
ARTICULATION THAN YOU SAID.
>> CHILES ARTICULATED--
>> YOU'RE NOT JUST LOOKING AT
WHAT ELSE WE CAN DO FOR THIS
CONTRACT.
WE'RE LOOKING AT WHOLE
500 MILLION-DOLLAR BUDGET.
HOW CAN WE MAKE UP THIS SHORT
FALL.
CORRECT?
>> EXACTLY.
AND, WHAT JUSTICE KOGAN STATED
IN THE CHILES CASE WAS THAT THE,
TWO THINGS.
THE POINT OF CONFLICT IS EXACTLY
WHAT YOU JUST SAID, YOUR HONOR.
THE FUNDS MUST BE AVAILABLE FROM
NO OTHER POSSIBLE REASONABLE
SOURCE BUT THE, BUT JUSTICE
KOGAN STATED THAT NO OTHER, THEY
HAVE TO BE NO OTHER REASONABLE
ALTERNATIVE MEANS OF PRESERVING
THE CONTRACT.
IN EXPLAINING THAT, IT
ALSO SAID YOU HAVE TO FIND THE
FUNDS ARE NOT AVAILABLE FROM NO
OTHER REASONABLE SOURCE.
THE CONFLICT IS THE SECOND PRONG
OF THE SECOND PART OF THE STRICT
SCRUTINY TEST.
AND I ALSO WANT TO SAY BEFORE I
DISCUSS CHILES AND THE
CONTEXT-- YES, YOUR HONOR.
>> SO, WHAT DO YOU THINK THE
SECOND PRONG OF THE CHILES TEST
IS?
>> THE SECOND PRONG OF THE
CHILES TEST IS THAT--
>> YOU HAVE A DISCONNECT.
WHAT IS YOUR TAKE ON WHAT THAT
SECOND PRONG IS OR SHOULD BE?

>> MY TAKE IS THAT, FIRST OF
ALL, THE CITY'S POSITION IS
THAT, IT WAS MET.
THE CHILES TEST WAS MET IN ANY
EVENT AND SUFFICIENT EVIDENCE IN
THE RECORD--
>> WHAT SECOND PART DID THE CITY
DEMONSTRATE?
>> THE CITY DEMONSTRATED THAT
THE SECOND PART WAS MET, IF IN
FACT IT APPLIES.
DO YOU-- I WANT TO ADDRESS
THAT, BECAUSE OF THE ENACTMENT
OF THE FINANCIAL URGENCY STATUTE
IT WASN'T IN EFFECT, THE LEAST
RESTRICTIVE MEANS OF APPLYING
THE CONSTITUTIONAL RIGHT TO
COLLECTIVELY BARGAIN.
AND THE WAY, AND, HOWEVER, THE
CITY MET THE CHILES TEST BECAUSE
THE ONLY, THE SOURCES THAT WERE
PRESENTED BY THE UNION, THE
SOLUTIONS TO THIS FINANCIAL
URGENCY, WERE ALL NEGATED IN THE
RECORD.
>> BUT NOBODY-- THERE HASN'T--
HERE IS THE SITUATION.
I DON'T KNOW, MR. CLAUSER IN WAS
SAYING WHAT HAPPENS.
SINCE PERC AND HEARING OFFICER
DID NOT MAKE THE DETERMINATION.
THE FIRST DISTRICT SAID IT WAS
NOT NECESSARY.
IF IT IS IN THE RECORD ARE AND
GO BACK TO FIRST DISTRICT AND
TAKE THEM BACK TO HEARING
OFFICER PERC TO MAKE THAT
DETERMINATION, YOU MAY STILL
PREVAIL BUT WHAT WE'RE DEALING
WITH IS THE ARGUMENT THAT YOU
STARTED TO MAKE WHICH IS, ONCE
THERE'S FINANCIAL URGENCY, YOU
CAN GO TO EXISTING CONTRACTS OF,
MUNICIPAL WORKERS, AND, WHO HAVE
COLLECTIVELY BARGAINED FOR WHAT
THEY HAVE RECEIVED AND, BECAUSE
THEY'RE, YOU KNOW, THIS IS,
WOULD BE THEIR ARGUMENT, BECAUSE
THEY'RE AN EASY TARGET, THEY
LOSE ALL THEIR BARGAINING

RIGHTS.
YOU CAN UNILATERALLY REDUCE
THEIR PAY.
THAT'S WHAT THEY'RE ARGUING
WITH.
THEY'RE NOT SAYING THAT UNDER NO
CIRCUMSTANCES CAN YOU DO IT.
BUT THERE HAS TO BE BOTH THE
COMPELLING STATE INTEREST AND NO
OTHER REASONABLE ALTERNATIVE.
NOW YOU'RE SAYING THE RECORD
SHOWS THERE WASN'T ONE BUT THAT
WASN'T DETERMINED.
SO, WHAT'S WRONG WITH THAT
SECOND STANDARD?
>> THE FIRST DCA ADOPTED THE
STANDARD YOU JUST ARTICULATED.
IT SAID THERE HAS TO BE NO OTHER
REASONABLE MEANS.
IT ADOPTED IT IN--
>> GO AHEAD.
>> IT DID ADOPT IT IN IT IS
INTERPRETATION IT SAID YOU HAVE
TO HAVE COMPELLING STATE
INTEREST AND EXISTENCE AFTER
FINANCIAL URGENCY WOULD PRESENT
A COMPELLING STATE INTEREST.
IT WENT ON TO SAY FURTHER THAT
THE STATUTE USES THE WORD,
REQUIRE.
THE STATUTE SAYS IN THE EVENT OF
AN FINANCIAL URGENCY WHICH
REQUIRES THE MODIFICATION OF A
CONTRACT.
THE FIRST DISTRICT COURT--
>> THE FIRST DCA SAID, APPLY THE
SECOND PRONG OF THE CHILES
STANDARD?
>> IT APPLIED--
>> WHERE WOULD THAT BE?
>> IT APPLIED THE FIRST PART OF
THE SECOND PRONG.
THERE ARE TWO PARTS TO THE LEAST
RESTRICTIVE MEANS TEST THAT IS
ARTICULATED BY JUSTICE KOGAN.
THE FIRST THERE HAS TO BE NO
REASONABLE ALTERNATIVE MEANS.
THE SECOND THE FUNDS ARE NOT
AVAILABLE FROM NO OTHER
REASONABLE SOURCE.

THE FIRST DISTRICT COURT OF
APPEAL IN HEADLEY APPLIED, SAID
THERE HAVE TO BE LEAST
RESTRICTIVE MEANS.
THERE HAS TO NO OTHER REASONABLE
MEANS TO PRESERVE THE CONTRACT
AND THE WAY IT DID IT, IT
INTERPRETED THE WORD REQUIRE NOT
ONLY WOULD THERE HAVE TO BE A
COMPELLING STATE INTEREST BUT
YOU WOULD-- IT WOULD BE AN
INTEREST THAT REQUIRES YOU TO
MODIFY THE CONTRACT.
SO THE FIRST DISTRICT, REALLY
ISN'T FAR OFF FROM THE TEST THAT
IS ENUNCIATED BY JUSTICE KOGAN.
>> WHAT WAS THE EVIDENCE THIS
HETHEY USED FOR THE SECOND
PRONG?
>> THE--
>> I FOUND, ISN'T THIS PART OF
THE RECORD, THAT THERE WAS, LIKE
A ROLLBACK ON THE MILEAGE AND
THE TAX, ADVALOREM TAX IN THIS
CASE?
>> YES.
>> OKAY.
SO RATHER THAN KEEPING THE
ADVALOREM TAX AT WHATEVER RATE
IT WAS AND MILEAGE AT WHATEVER
RATE IT WAS, THEY CHOSE TO ROLL
THOSE BACK AND THEN CUT ALL OF
THE FIRE, NO, THESE WERE POLICE
OFFICERS, THE POLICE OFFICERS
SALARIES, RIGHT?
THAT'S WHAT HAPPENED IN THIS
CASE.
>> YES SO THEY FOUND UNDER THOSE
CIRCUMSTANCES THAT WAS THE LEAST
RESTRICTIVE MEANS?
>> YES.
THERE WERE FINDINGS IN THE
RECORD THAT WERE SUPPORTED BY
COMPETENT SUBSTANTIAL EVIDENCE.
>> BUT ISN'T THERE ALSO SOME
CASE LAW, SEEMS TO ME THERE WAS
TESTIMONY IN THIS RECORD THAT
WHOLE THING ABOUT THE MILLAGE
AND THE ADVALOREM TAXES, THEY
DID THAT FOR POLITICAL REASONS?

AND ISN'T THERE SOME CASE LAW
ABOUT THOSE ARE NOT THE KIND OF
CONSIDERATIONS YOU TAKE INTO
EFFECT WHEN, WHEN YOU'RE MAKING
THESE KIND OF DECISIONS?
>> I TAKE ISSUE WITH WHAT THAT
MEANS BECAUSE IN THE RECORD IT
REFLECTS THAT THE REASON WHY THE
TAXES WERE NOT RAISED WERE THAT
THE--
>> NO, NOT RAISED BUT--
>> ROLLED BACK, THEY WERE
LOWERED--
>> THEY WERE NOT RAISED.
THEY DIDN'T STAY LEVEL.
THEY WERE ACTUALLY ROLLED BACK.
>> RIGHT.
>> OKAY.
>> THE REASON THAT WAS GIVEN
WAS, GIVEN THE FACT THAT
UNEMPLOYMENT WAS AT 131/2% IN
MIAMI-DADE AT, AND HIGHER, IN
CERTAIN PARTS OF MIAMI-DADE, THE
FACT THAT PROPERTY VALUES WERE
PLUMMETING, THE FACT THAT THE,
THAT JUST, TAXES, THAT THE CITY,
THE CITY'S CITIZENS WERE IN SUCH
A DEVASTATING FINANCIAL
SITUATION, THAT THE MAYOR AND
THE MANAGER AT THAT TIME DID NOT
THINK IT WAS REASONABLE TO
IMPOSE ANY OTHER TAX RATE.
AND, THAT IS UNREBUTTED IN THE
RECORD.
THAT IS, THE RECORD WITH
COMPETENT SUBSTANTIAL EVIDENCE
SUPPORTS THAT WAS NOT A
REASONABLE SOLUTION.
>> WHAT DOES THE RECORD SHOW
ABOUT WHAT THE, THE MILLAGE WAS
LOWERED BY HOW MUCH?
>> I DON'T KNOW IF IT SHOWS
EXACTLY HOW MUCH BUT IT WAS
LOWERED.
>> THE RECORD SHOWS, JUST ON
THAT SAME POINT, DOES THE RECORD
SHOW HOW MUCH ADDITIONAL MONEY,
HOW MUCH ADDITIONAL SHORTFALL I
GUESS THE CITY HAD BECAUSE OF
THE LOWERED MILLAGE AND

ADVALOREM TAX?
>> I THINK THE RECORD SHOWS THAT
IF YOU RAISED THE TAX RATE TO
THE TOP--
>> NO, NO, NOT RAISING IT.
I'M SAYING DROPPING IT BACK.
WAS THAT AT CERTAIN LEVEL,
CORRECT?
>> IT WAS AT CERTAIN LEVEL, YES.
>> THEY REDUCED THAT LEVEL.
I'M ASKING YOU HOW MUCH MONEY
THAT REDUCTION THEN ADDED TO THE
DEFICIT?
>> I DON'T THINK THAT THE RECORD
SHOWS THAT, WHAT YOU'RE ASKING
ME EXACTLY.
WHAT IT DOES SHOW THAT IF IT WAS
RAISED TO THE MAX, THAT IT WOULD
NOT, IT STILL WOULD NOT COVER
HALF OF THE 115 MILLION, OR
ROUGHLY HALF THE 115 MILLION
DEFICIT THAT THE CITY WAS
FACING.
>> I BELIEVE THEIR ARGUMENT IS,
ONCE THE FINANCIAL URGENCY WAS
DETERMINED, THEN THERE WERE
CERTAIN STATUTORY REQUIREMENTS
THAT HAD TO BE DONE AND THAT
INSTEAD THE ACTIONS WERE THAT,
UNILATERAL ACTION WAS TAKEN.
CAN YOU ADDRESS THAT?
>> YES.
THAT IS THE SECOND ISSUE THAT
HAS BEEN PREVIOUSLY USED BY THE
PARTIES HERE, THAT IS WHETHER OR
NOT THE CITY WAS REQUIRED TO
COMPLETE THE IMPASSE RESOLUTION
PROCESS PRIOR TO MAKING
MODIFICATIONS TO THE COLLECTIVE
BARGAINING AGREEMENT.
FIRST, THE LANGUAGE OF 447.4095
DOES NOT STATE THAT YOU HAVE TO
COMPLETE THE IMPASS RESOLUTION
PROCESS.
IT SAYS YOU HAVE TO PROCEED
PURSUANT TO THE PROVISIONS OF
IMPASSE RESOLUTION PROCESS AND
THE CITY'S POSITION IS, JUST AS
A PURELY, PURE STATUTORY
CONSTRUCTION OF THE LANGUAGE

USED, THAT THERE IS NO
REQUIREMENT THAT THE CITY CAN
NOT MAKE MODIFICATIONS.
>> SAID SHALL, DOESN'T IT?
>> PROCEED.
>> SHALL PROCEED TO 403--
>> PROCEED MEANS TO BEGIN A
PROCESS BUT IT DOESN'T MEAN TO
COMPLETE THE PROCESS.
>> WAS IT BEGUN?
>> IT WAS BEGUN AND IT WAS JUST
NEVER PURSUED.
>> WHEN WAS, WHEN DID THEY,
PROCEED UNDER 403?
>> SHORTLY AFTER THE, THIS ALL
HAPPENED AROUND AUGUST, AT THE
END OF AUGUST 2010.
SO IT WAS SHORTLY THEREAFTER.
IT JUST NEVER--
>> BEFORE OR AFTER THE
IMPOSITION OF THE CHANGES TO THE
COLLECTIVE BARGAINING AGREEMENT?
>> BEFORE.
>> DO YOU HAVE A DATE ON THAT?
BECAUSE I DIDN'T SEE THAT IN THE
RECORD.
>> I DO NOT HAVE A DATE ON THAT.
IT WAS VERY COMPRESSED TIME
PERIOD.
REMEMBER THE STATUTE PROVIDES
FOR EXPEDITED IMPACT BARGAINING
AND I WILL GET TO THAT BUT I CAN
TELL YOU, I THINK A MAGISTRATE
WAS CHOSEN BUT IT FIZZLED OUT
AND THERE WAS NO PURSUIT OF THAT
PROCESS AFTER, AFTER THE BUDGET
AND, WAS ADOPTED.
SO, SECONDLY, THE STATUTE USES
THE WORD, IMPACT.
IT SAYS, IN THE EVENT OF
FINANCIAL URGENCY, REQUIRING THE
MODIFICATION OF A CONTRACT THE
PARTIES SHALL MEET AND TO
NEGOTIATE THE IMPACT OF THE
URGENCY.
PERC FOUND THAT THE WORD IMPACT
HAS A PRECISE MEANING IN LABOR.
IT IS TERM OF ART.
IT REFERS TO IMPACT BARGAINING.
IT IS WHERE YOU'RE NOT

NEGOTIATING DIRECTLY CONDITIONS
AND TERMS OF CONDITIONS OF
EMPLOYMENT BUT YOU ARE--
>> WHERE DOES THE TERM COME
FROM?
BECAUSE THE STATUTE ITSELF DOES
NOT, YOU WOULD AGREE, DOES NOT
SAY IMPACT BARGAINING?
>> IT DOES NOT USE THE WORD,
BARGAINING.
>> SO WHERE DOES THE TERM IMPACT
BARGAINING COME FROM?
>> ACCORDING TO PERC AND CASE
LAW IT'S A TERM OF ART IN LABOR
LAW WHERE A MANAGEMENT IS
EXERCISING A MANAGEMENT RIGHT,
FOR EXAMPLE, CLOSING DOWN A
POLICE STATION.
>> SO IN THOSE CASES CAME AFTER
THIS STATUTE?
>> THE CASES, THERE HAVE BEEN
CASES, PERC HAS NOT AFTER THIS.
>> RECORDED CASE.
>> OKAY.
>> THE CASE THAT WERE RELIED
ON--
>> WERE AFTER THE STATUTE, 1959.
>> AFTER THE STATUTE, CORRECT?
>> BUT I DON'T THINK THERE HAS
BEEN ANY LIMITATION ON THE FACT,
I DON'T THINK IMPACT BARGAIN
SOMETHING NEW IN LABOR LAW.
>> I GUESS, I LOOK AT THE
STATUTE.
I READ THE STATUTE.
THE LEGISLATURE COULD HAVE
CLEARLY SAID, IMPACT BARGAINING
BUT THEY DIDN'T SAY IMPACT
BARGAINING.
SO WHAT YOU'RE REALLY ASKING US
TO DO IS READ INTO THIS STATUTE
THAT'S WHAT THE LEGISLATURE
MEANT?
>> I THINK WHAT I'M ASKING IS
THAT THE COURT FIND THAT THE
CITY'S, THAT PERC'S
INTERPRETATION OF THE STATUTE
WAS A REASONABLE INTERPRETATION
AND THEREFORE IT WAS NOT CLEARLY
ERRONEOUS.

EVEN IF THE UNION'S
INTERPRETATION OF IT IS
REASONABLE AND PERC'S
INTERPRETATION OF IT WAS
REASONABLE I THINK--
>> SO, EVEN IF WE GET TO THAT
POINT, ALTHOUGH I REALLY AM
STRUGGLING TO SEE THAT THAT'S
WHAT THE LEGISLATURE SAID, BUT
EVEN IF WE GET TO THAT POINT, IF
IT IS IMPACT BARGAINING, THAT
MEANS IT GIVES THEM THE RIGHT TO
DO THIS ACTION UNILATERALLY,
THAT'S YOUR ARGUMENT?
>> IN IMPACT BARGAINING, WHETHER
INVOLVES A MANAGEMENT RIGHT
WHICH--
>> SO WHY DO WE EVEN NEED THE
OTHER SENTENCE IN THE PARAGRAPH
THAT SAYS, THAT THE PARTIES
SHALL THEN PROCEED, PURSUANT TO
THE PROVISIONS OF 447.403?
>> BECAUSE THE, GO THROUGH THE
PROCEDURE OF 447.403 IS NOT
FUTILE.
WHAT THE PROCESS, THE WAY IT
HAPPENED, ALLOWED, WAS FOR THE
CITY TO BALANCE THEIR BUDGET AND
TO AVOID HAVING TO INVOKE THE
PROTECTIONS OF THE FINANCIAL
EMERGENCY STATUTE WHICH WOULD
HAVE PUT US UNDER THE CONTROL OF
THE STATE.
WE WERE AT A POINT WHERE WE
WEREN'T ABLE TO PAY BILLS AND,
THE CITY NEEDED TO, MAKE THOSE
MODIFICATIONS IMMEDIATELY.
THE, SO, NUMBER ONE, THE
INTERPRETATION OF SUPPORT FOR
447.4095 WOULD FRUSTRATE ITS
PURPOSE IF THE CITY WASN'T
ALLOWED TO MAKE THE CHANGES
IMMEDIATELY.
>> EXCEPT THAT, DID THEY, SO
THEY MADE THEM BEFORE THE 14-DAY
PERIOD?
>> THEY MADE THEM AFTER THE
14-DAY PERIOD.
>> OKAY.
SO BUT IT SAYS THAT--

>> 14 DAYS WAS EXHAUSTED.
>> IT SAYS THE LAST SENTENCE OF
THE STATUTE, UNFAIR LABOR
PRACTICE CHARGE THAT NOT BE
FILED DURING THE 14 DAYS DURING
WHICH NEGOTIATIONS ARE
OCCURRING.
WHAT WOULD THE NEGOTIATIONS BE?
JUST MANAGEMENT TELLING THE
FIREFIGHTERS, WE MADE A DECISION
AND, TOO BAD?
HOW DO YOU NEGOTIATE SOMETHING
WHERE THE CITY HAS ALL THOSE
CARDS AT THAT POINT?
>> WELL, I THINK THAT THE
TRUNCATED PERIOD JUST RECOGNIZES
THE FACT THAT, YOU KNOW, IF THE
STATUTE'S TRIGGERED YOU ARE
DEALING WITH A SERIOUS FINANCIAL
CONDITION.
AND IT, WHETHER OR NOT 14 DAYS
IS ENOUGH TIME TO NEGOTIATE, YOU
KNOW, I'M SURE, THERE MAY HAVE
BEEN OTHER WAYS TO IMPOSE THESE
CHANGES.
>> SO THE UNIONS DID AGREE TO A
CHANGE IN THEIR CONTRACT?
>> THEY NEVER CHALLENGED IT.
THERE WERE TWO UNIONS THAT DID
NOT CHALLENGE IT.
AND ONE OTHER UNION THAT DID.
>> LET ME ASK YOU.
IT SEEMS TO ME THAT THE URGENCY
OCCURRED HERE BECAUSE OF THE
LATE FILING OF ANY CLAIM OF
FINANCIAL URGENCY.
THESE NEGOTIATIONS STARTED BACK
IN APRIL, DIDN'T THEY?
WITH THIS UNION?
>> THEY DID START.
>> BUT THEY WAITED UNTIL AUGUST
TO THEN DECLARE SOME KIND OF A
FINANCIAL URGENCY, THEREFORE,
YOU KNOW, MAKING THE TIME
SHORTER BETWEEN THE TIME THAT
THEY HAVE TO DECLARE THE BUDGET,
AS I UNDERSTOOD IT, RIGHT?
>> I DON'T THINK YOU COULD OR
SHOULD INFER THERE WAS ANY, YOU
KNOW, DELAY.

I THINK--
>> I'M NOT SAYING THERE WAS BAD
FAITH HERE.
I'M SIMPLY SAYING THAT THIS
STATUTE, AS IT'S WRITTEN, COULD
HAVE BEEN COMPLIED WITH HAD THIS
PROCESS STARTED A LITTLE EARLIER
WOULDN'T IT?
WE WOULD HAVE HAD TIME TO GO
THROUGH THE 403 PROCESS WHERE I
WOULD ASSUME UNDER THAT PROCESS,
WE WOULD DETERMINE WHETHER OR
NOT THERE WAS IN FACT A
FINANCIAL URGENCY AND WHETHER OR
NOT THE CITY HAD, THE LEAST
RESTRICTIVE MEANS, HAD DONE THE
LEAST RESTRICTIVE MEANS OF
TRYING TO CHANGE THE COLLECTIVE
BARGAINING AGREEMENT?
>> I DON'T KNOW THAT IT WOULD
HAVE BECAUSE I THINK THAT, YOU
KNOW, THE STATUTE, THE IMPASSE
PROCESS, YOU KNOW, HAS 45 DAYS
FROM THE MINIMUM OF 45 DAYS FROM
THE FINAL ORDER.
SO I THINK THAT FIRST OF ALL,
THE PROCESS TAKES LONGER THAN
THAT.
IT IS NOT A FOOT TILE PROCESS
TO-- FUTILE PROCESS TO RESPOND
TO AN EARLIER INQUIRY.
IT IS A PROCESS WHEREBY THE CITY
COMMISSION CAN CONSIDER WHAT IT
DID AND CAN MAKE CHANGES.
I THINK IT IS AN IMPORTANT PROS.
>> THANK YOU.
>> THANK YOU.
WE ASK THAT YOU AFFIRM THE FIRST
DISTRICT COURT OF APPEAL.
>> VERY BRIEFLY, EXCUSE ME, VERY
BRIEFLY, YOUR HONORS.
THE CITY'S FINANCIAL PROBLEMS
DIDN'T SNEAK UP ON THEM.
>> LET'S GO TO WHERE THE POINT
OF CONFLICT IS.
THE CITY IS SAYING THAT THE
FIRST DISTRICT DID USE A LEAST
RESTRICTIVE MEANS TEST.
THAT THEY SAY IS NOT DIFFERENT
THAN CHILES.

CAN YOU, I ALWAYS, WHEN
OBVIOUSLY THE FOURTH DISTRICT
THOUGHT IT WAS DIFFERENT, THEY
CERTIFIED CONFLICT.
SO COULD YOU CLARIFY THE
DIFFERENCE BETWEEN THE FIRST
DISTRICT'S EXPLANATION OF LEAST
RESTRICTIVE MEANS AND THE FOURTH
DISTRICT'S IN CHILES?
>> I'M READING FROM PAGE 893 OF
THE OPINION.
ACCORDINGLY WE CONCLUDE IN A
PROCEEDING UNDER SECTION
447.4095 THE LOCAL GOVERNMENT IS
NOT REQUIRED TO DEMONSTRATE THAT
FUNDS ARE NOT AVAILABLE FROM ANY
OTHER POSSIBLE SOURCE TO
PRESERVE THE AGREEMENT.
INSTEAD THEY SHIFTED THE BURDEN
TO THE OTHER SIDE AND SAID TO
KEEP YOUR CONSTITUTIONAL RIGHT,
THROW SOME IDEAS AT US AND WE
JUST GET TO SAY NO.
AND THE, AS JUSTICE QUINCE
CORRECTLY RECALLED FROM THE
RECORD, THE CITY MANAGER SAID,
DON'T ROLL THE TAX RATE BACK.
DON'T, YOU KNOW, USE THE
ROLLBACK RATE SO TO AT LEAST
KEEP THE REVENUE LEVEL AND CITY
COMMISSIONERS DID IT ANYWAY.
AS THE MANAGER OBSERVED IN HIS
TESTIMONY THEY DID IT FOR
POLITICAL REASONS.
>> BUT NOW, IF I UNDERSTAND
THIS, IT IS A LITTLE CONFUSING,
IS THE ROLLBACK RATE IN THESE
CIRCUMSTANCES A RATE WHERE THE
MILLAGE WOULD HAVE ACTUALLY BEEN
INCREASED?
>> WHEN YOU HAVE LOSS OF
PROPERTY VALUE, THE ROLLBACK
RATE WOULD HAVE INCREASED
MILLAGE FOR PURPOSE AT LEAST
KEEPING YOUR REVENUE LEVEL.
>> KEEP SAME AMOUNT OF REVENUE
LEVEL BUT HAVE HIGHER TAX RATE?
>> YES, SIR.
THEY HAD ROOM WITHIN THEIR TAX
CAP TO BE ABLE TO DO THAT THE

POINT IS, IF YOU'RE SAYING I
HAVE NO OTHER SOURCE TO GET
MONEY BUT FOR POLITICAL REASONS
YOU CUT YOUR REVENUE, THAT IS
LIKE QUITTING YOUR JOB TO MAKE
LESS MONEY SO YOU DON'T HAVE TO
PAY SOMEBODY ELSE.
THAT IS EXACTLY WHAT THEY DID.
AND THAT IS NOT HOW WE PREDICATE
OUR CONSTITUTIONAL RIGHTS.
IF THESE EMPLOYEES HAD HAD
INDIVIDUAL EMPLOYMENT CONTRACTS
WITH THE CITY THEY COULDN'T HAVE
DONE THIS.
ONLY BECAUSE THEIR RIGHTS WERE
PRESERVED IN A COLLECTIVE
BARGAINING AGREEMENT WHICH THE
PEOPLE OF FLORIDA SAID, THAT'S
THE RIGHT OF A CITIZEN TO HAVE.
WERE THEY SUBJECT TO THIS, FAIT
ACCOMPLI.
AND I THINK JUSTICE PARIENTE,
YOU OBSERVED CORRECTLY THE CITY
HAD ALL THESE CARDS.
ONCE THE CITY SAID, WE'RE JUST
CHANGING IT, WE'RE CHANGING THE
CONTRACT.
WE'RE CHANGING THE RULES.
WE'RE CUTTING YOUR PENSION.
BY THE WAY DID NOT CUT ELECTED
OFFICERS PENSION AT THE SAME
TIME, WHY WOULD YOU GO TO A
HEARING WHERE THE PERSON WHO IS
ALREADY MADE THE JUDGMENT IS
SUPPOSED TO BE THE JUDGE?
>> THEY CUT WAGES ACROSS THE
BOARD?
>> I'M SORRY?
>> DID THEY CUT WAGES ACROSS THE
BOARD?
>> I BELIEVE ALL CITIES
EMPLOYEES TOOK A WAGE CUT.
THE OFFICERS OFFERED A LONG LIST
OF SOLUTIONS ON HOW TO REDUCE
REVENUE BUT THE CITY SAID, NO,
NO, WE WANT LONG-TERM SAVINGS.
THAT IS NOT WHAT IS AT ISSUE IN
A FINANCIAL URGENCY CASE.
>> WAS THERE AN IMPASSE
RESOLUTION PROCESS STARTED?

>> AS I UNDERSTAND IT, THEY HAD SENT THE NOTICE TO PERC TO APPOINT A SPECIAL MAGISTRATE.
THE IMPASSE PROCESS AS YOU KNOW WORKS, THERE IS A FACT-FINDER WHO MAKES A RECOMMENDATION WHICH EITHER SIDE CAN REJECT.
THEN ULTIMATELY THE CITY COMMISSION WOULD HAVE STILL HAD THE POWER TO DECIDE HOW TO RESOLVE THIS.
IT WAS BEGUN.
BUT ONCE THE CITY HAD EFFECTIVELY SAID, INSTEAD OF SITTING AS NEUTRAL, THAT THEY'RE REQUIRED TO DO DURING THE IMPASSE RESOLUTION PROCESS, THEY ACTED AS ADVOCATE AND USED LEGISLATIVE AUTHORITY TO DO WHAT NO OTHER EMPLOYER COULD DO.
THEY COULDN'T DO IT TO THE GUY THAT PAVED A STREET IN FRONT OF CITY HALL BUT DID IT TO THEIR WORKERS WHO HAD NOT ONE CONSTITUTIONAL RIGHT AT ISSUE, THE CONTRACT, BUT THE RIGHT TO BARGAIN.
THE FIRST SIM DCA SIMPLY DECIDED CONTRARY TO YOUR RULES WITH HOFFMAN VERSUS JONES, WE DISAGREE WITH THE SUPREME COURT.
>> WHAT ABOUT THEIR POSITION EVEN HAD THE MILLAGE RATES MAXED OUT THAT WOULD HAVE ONLY COVERED HALF THE DEFICIT?
>> YOU KNOW, JUSTICE POLSTON, IF THEY HAD TAKEN ANY OF THE OTHER SUGGESTIONS WHICH ARE NOTED IN DETAIL IN THE RECORD, ONE OF THE SUGGESTIONS THE UNION MADE WAS TO ALTER THE CONTRIBUTION SCHEDULE FOR THE PENSION AND CHANGE THE COST OF LIVING ADJUSTMENT WHICH WOULD HAVE FREED UP $50 MILLION IMMEDIATELY.
SO NOT ONLY DID THE CITY TURN DOWN TENS OF MILLIONS OF DOLLARS OF RECOMMENDED SAVINGS, THEY CUT THE PAY.

MEANING THEY CUT THEIR REVENUE.
>> SO THIS THAT IS DISPUTED
ISSUE OF FACT?
>> NO, THAT ISSUE OF FACT, HE
EFFECT IT HAD, WHETHER IT WAS
REASONABLE ALTERNATIVE WHERE THE
WRONG STANDARD OF LAW GOT USED.
PERC USED, ACTUALLY I DON'T KNOW
WHAT STANDARD THEY USED.
THEY CERTAINLY DIDN'T USE THE
CHILES STANDARD.
THEY SAID WE'LL NOT SECOND-GUESS
THE POLITICAL JUDGMENT OF THE
GOVERNMENT.
BUT WHEN THE GOVERNMENT IS
VIOLATING CONSTITUTIONAL RIGHTS
OF ITS CITIZENS THAT IS EXACTLY
WHAT YOU HAVE TO DO.
WE RESPECTFULLY ASK YOU TO
VACATE HEADLEY, ADOPT THE FOURTH
DCA'S DECISION IN HOLLYWOOD
FIREFIGHTERS, AND EITHER SEND
THE PARTIES BOOK TO
SEPTEMBER 29th, 2010, OR
REMAND IT TO PERC WITH
INSTRUCTIONS IT IS ALL UNDONE
AND LET'S DO IT AGAIN.
THANK YOU FOR YOUR ATTENTION.
>> THANK YOU FOR YOUR ARGUMENTS.
THE COURT IS IN RECESS UNTIL
9:00 TOMORROW MORNING.