ARIZONA SUPREME COURT
ORAL ARGUMENT CASE SUMMARY

AM. FED. OF STATE CTY. AND MUN. EMPLOYEES, AFL-CIO LOCAL 284, et al. v. CITY OF PHOENIX, et al.
CV-19-0143-PR

PARTIES:

Petitioners/Plaintiffs: American Federation of State County and Municipal Employees, AFL-CIO, Local 2384; American Federation of State County and Municipal Employees, AFL-CIO, Local 2960; Administrative Supervisory Professional & Technical Employees Ass'n; Frank Piccioli; Ron Ramirez, Debra Novak Scott; Luis Schmidt (collectively, "Members").

Respondents/ Defendants: City of Phoenix; City of Phoenix Employee Retirement System; and City of Phoenix Retirement System (collectively, "the City").

FACTS:

Accrued Vacation and City Pension Benefits. The City of Phoenix is a "home rule" city, meaning that it operates largely independently of state legislative oversight under a city charter authorized under article 13, section 1 of the Arizona Constitution. In 1953, it amended its charter to adopt the City of Phoenix Employees' Retirement Plan ("the Plan" or "COPERS"), and designated the Plan's Retirement Board as being responsible "for the administration, management and operation" of the Plan "and "for construing and carrying into effect the [Plan's] provisions."

The Plan is a defined benefit pension plan, meaning that members become eligible upon retirement to receive a fixed annual pension benefit for life. The Plan ties benefit amounts to the member's pre-retirement earnings and length of service. Specifically, the benefit is calculated by multiplying: (1) the "final average compensation"; (2) "credited service" time; and (3) a defined benefit rate. "Final average compensation" is calculated based on a member's average compensation paid over a three-year period of "credited service." "Compensation," in turn, is defined as: "A member's salary or wages paid him by the City for personal services . . . ." The provision does not say whether payouts for unused vacation, paid at retirement, are to be treated as "compensation" for the purpose of calculating a member's "final average compensation."

The City's policy on vacation leave benefits is set forth in an administrative regulation. Since at least 1979, the City has authorized its employees to accrue and carryforward their unused vacation hours from year-to-year. The City has amended the regulation from time to time to change the number of unused hours that City employees may accrue and carryforward. Since at least 1980, the City has offered eligible employees the option of "cashing out" a certain amount of accrued vacation leave when the employee separates or retires from City employment.

Before 2014, the City counted at retirement all one-time payouts for unused vacation leave as pensionable compensation under the pension formula. None of the City's regulations or personnel rules mentioned or authorized these practices. Additionally, the City Charter was not amended to reflect the practices.

In 2014, after unsuccessful negotiations with the City unions, the City amended its regulations to end the practice of including accrued vacation payouts in calculating "final average compensation" under the pension formula. Employees, however, were allowed to apply payouts to their pension calculation to the extent they accrued before June 30, 2014.

The Lawsuit. In September 2014, Members sued the City in superior court, seeking declaratory, injunctive relief. The suit challenged the Plan's calculation of pension benefits under the amended regulation, contending that the exclusion of unused vacation leave payouts diminished or impaired their pension benefits and was contrary to the Plan's express terms, the federal and Arizona constitutions, and common law.

The parties brought competing motions for summary judgment, and the court ruled in the City's favor. Relying on the definition of "salary" in *Cross v. Elected Officials Ret. Plan*, 234 Ariz. 595 (App. 2014), the court concluded that "salary or wages" as used in the definition of "final average compensation" "refer to regular, period pay for services rendered." It noted that the definition of "average final compensation" referred to the "highest *annual* compensation," which "sets an annual timeframe for pensionable pay." And here, the court concluded that the retirement vacation payout did not qualify because it was not paid at regular intervals. It also held that the City could prospectively change the practice of including such payments in calculating pensions to conform to the Charter's language. Such a change, it concluded, would not violate the Arizona Constitution or common law. Members then appealed.

The Court of Appeals' Decision. Relying on *Piccioli v. City Phoenix*, 246 Ariz. 371 (App. 2019), the Court of Appeals affirmed the superior court's grant of summary judgment.

ISSUES:

The petitioners have asked the Supreme Court to address the following issues:

1. For decades, Defendants promised that deferred payment of vacation at termination of employment was Compensation included in COPERS' benefit formula and the Retirement Board administered COPERS consistent with that promise.

   Did the lower court err in holding that Members' rights are limited to the reinterpreted terms of COPERS, that they did not acquire vested rights under COPERS as administered, and that they have no right to enforce Defendants' promises?

2. The Board has sole authority to administer and construe COPERS; its decades-long interpretation and practice was supported by universal understanding, contemporaneous dictionary definitions, judicial precedent, and fundamental canons of construction.

   Did the lower court err in holding that deferred payment of vacation at termination of employment is unambiguously excluded from COPERS for benefit calculation purposes absent express voter approval?