



**ARIZONA SUPREME COURT
ORAL ARGUMENT CASE SUMMARY**



**FRANK PICCIOLI, et al. v. CITY OF PHOENIX, et al.
CV-19-0116-PR**

PARTIES:

*Petitioners/Plaintiffs
& Intervenors:*

Frank Piccioli; Debra Novak-Scott; Luis Schmidt; Ronald Ramirez); American Federation of State County and Municipal Employees, AFL-CIO (“AFSCME”), Local 2960; AFSCME, Local 2384; Administrative Supervisory Professional & Technical Employees Association; Stuart Casey; Virginia Cota; Paul Enniss; Vivian Escobar; John F. Estes; Philip Koda; John Lay; Louis Matamoros; David Meiner; Joan Olson; Willie R. Price, Jr.; David Robinson (collectively, “Members”).

*Respondents/
Defendants:*

City of Phoenix; City of Phoenix Employee Retirement System; and City of Phoenix Retirement System Board (“the Retirement Board”) (collectively, “the City”).

FACTS:

Sick-Leave and City Pension Benefits. The City of Phoenix is one of about twenty “home rule” cities in Arizona, which operate largely independently of state legislative oversight by adopting a city charter under article 13, section 1 of the Arizona Constitution. Phoenix adopted its charter in 1913. In 1953, it amended its charter to adopt the City of Phoenix Employees’ Retirement Plan (“the Plan” or “COPERS”), and designated the Retirement Board as being responsible “for the administration, management and operation” of the Plan “and “for construing and carrying into effect the provisions” of the Plan.

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 accrued sick leave are to be treated as “compensation” for the purpose of calculating a member’s “final average compensation.”

In 1996, the city manager adopted a regulation permitting an employee to convert a certain percentage of his or her accrued sick leave hours to a cash payout at retirement. The regulation did not say anything about whether the payout would be treated as “compensation” for the purpose of calculating a member’s “final average compensation.” The parties agree, however, that as a matter of administrative practice from 1996 to 2012, the Retirement Board and administrative staff counted these one-time payouts as part of the employee’s “final average compensation.” Neither the City’s Charter nor City regulations mentioned or authorized this practice.

The Lawsuit. In 2012, after unsuccessful negotiations with City unions, the City amended its benefit regulations to exclude from an employee’s pensionable compensation all payouts for sick leave accrued after July 1, 2012. Just before the City adopted the amendment, the unions and the plaintiffs (all current employees) filed suit against the City in superior court, seeking declaratory, injunctive, and mandamus relief based on the claim that the amended regulation would unlawfully reduce their pension benefits. A group of retired employees later intervened on the plaintiffs’ side.

After a bench trial, the superior court found in Members’ favor, ruling: (1) unused sick leave is non-monetary “compensation” under the Plan; (2) the City Council fixed the value of that compensation through its benefit regulations and its repeated approval of the collective bargaining agreements; and (3) “it was uniformly, widely, and commonly understood that payouts for unpaid sick leave were to be included in the final average compensation.” Accordingly, it ruled the City’s application of the amended regulation violated common law principles and the Pension Clause of the Arizona Constitution. Consequently, it ruled that the plaintiffs and intervenors were entitled to a judgment in their favor that amended regulation was not applicable to them for their 2012-2014 contracts. But because neither side offered evidence about what happened in collective bargaining for the next contract term, it expressed no opinion about whether the amended regulation applied to any employees after 2014. The City then filed an appeal.

The Court of Appeals’ Decision. The Court of Appeals reversed the superior court’s judgment and remanded for entry of judgment in favor of the City. It held that: (a) the Plan did not compel the City to include lump-sum, irregular cash payouts for accrued sick leave benefits at separation as pensionable “compensation”; and (b) the City did not violate common-law or constitutional principles by amending its regulations in 2012 to prospectively end the practice.

ISSUES:

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

1. In a definition unchanged from 1953, COPERS defines Compensation as “salary or wages” paid by the City for personal services and expressly vests the Board with authority to construe COPERS’ terms. The trial court found Defendants agreed and consistently included payments for accrued sick leave in the compensation used to calculate retirement benefits for 16 years.

Given these facts, did the court err in holding that the terms “salary or wages” unambiguously exclude payment for accrued sick leave and that “[b]ecause Phoenix voters never took any affirmative act to authorize this practice” COPERS could not be interpreted in accordance with the parties’ agreed understanding and practice?

2. Under Arizona law, public employees have vested contractual and constitutional rights to the pension benefits in effect at commencement of employment. The trial court found a long history of agreement and practice by Defendants to include payments for accrued sick leave in the calculation of pension benefits.

Did the court err by holding that Members’ common law and constitutional contractual protections are limited to the terms of the “codified Plan,” and by refusing to enforce Members’ rights under their contracts of employment?

This Summary was prepared by the Arizona Supreme Court Staff Attorneys’ Office solely for educational purposes. It should not be considered official commentary by the Court or any member thereof or part of any brief, memorandum, or other pleading filed in this case.