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1999 Survey of Rhode Island Law: Cases: Labor Law/Municipal Law

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Labor Law/Municipal Law .*Providence Lodge No. 3, Fraternal Order of Police v. City of Providence*, 730 A.2d 17 (R.I. 1999). A decision of an arbitration panel is only reviewable by writ of certiorari to the Rhode Island Supreme Court and therefore a superior court is without jurisdiction over such a matter. An arbitration panel has the authority to modify cost of living adjustments (COLA) prospectively, irrespective of a consent decree. However, arbitrators must make an independent judgment as to whether a city has the ability to pay a COLA other than the one proposed by the city. Furthermore, an arbitration panel does not exceed its jurisdiction in awarding COLAs that differ from the COLA specified in an ordinance.

*Providence Lodge No. 3, Fraternal Order of Police v. City of Providence*¹ consists of two consolidated cases.² In each case, the City of Providence (City) filed petitions for writ of certiorari and raised issues in regards to arbitration awards that resulted from two separate contract disputes.³ One of the disputes was between the City and Providence Lodge No. 3, Fraternal Order of Police (FOP) and the other involved the City and the Firefighters' Union Local 799 (Local 799).⁴

FACTS AND TRAVEL

In both of the cases consolidated for appeal, the parties selected a panel to arbitrate contract proposals, the first a contract proposal set forth by the FOP, and the second a contract dispute involving Local 799.⁵ Both panels awarded COLAs to each union irrespective of the COLAs proposed by the City.⁶ Pursuant to the Municipal Police Arbitration Act (MPAA)⁷ and the Fire Fighters Arbitration Act (FFAA),⁸ the arbitration panel awarded the FOP a five percent COLA⁹ and Local 799 a six percent COLA.¹⁰ The City

1. 730 A.2d 17 (R.I. 1999).

2. *See id.* at 18.

3. *See id.*

4. *See id.*

5. *See id.*

6. *See id.*

7. *See* R.I. Gen. Laws § 28-9-2 (1956) (1995 Reenactment).

8. *See* R.I. Gen. Laws § 28-9-1 (1956) (1995 Reenactment).

9. It is noted that five percent was chosen because this was in accordance with the COLA in a previous agreement for the period of 1989-1991. *See Providence Lodge No. 3*, 730 A.2d at 18.

only proposed a COLA of three percent, which was in accordance with a consent decree entered in December 1991.¹¹

The 1991 consent decree was instated subsequent to a decision by the Retirement Board to increase COLAs for all employees.¹² In 1992, in the case of *Betz v. Paolino*,¹³ the Rhode Island Supreme Court stated that "the city council alone has the authority to amend pension benefits under the retirement provision of the city charter."¹⁴ In 1994, the city council amended its retirement ordinance to reflect a three percent COLA.¹⁵ This amendment modified the agreed upon COLAs set in the 1991 consent decree.¹⁶

The City appealed the arbitration panels' decisions regarding the FOP to the superior court.¹⁷ The superior court confirmed the police award.¹⁸ Thereafter, the City appealed the superior court's affirmance of the FOP award, and also sought review of arbitration awards made regarding the Local 799 contract dispute.¹⁹

ANALYSIS AND HOLDING

Although the only aspect of the arbitration panels' awards challenged by the City were the COLAs involved, a number of other issues arose for the court to decide.²⁰ The first issue the Rhode Island Supreme Court addressed was the City's argument that the superior court did not have jurisdiction to affirm the FOP's arbitration award.²¹ The Rhode Island Supreme Court held that the superior court did not have jurisdiction to review the arbitration decision in light of section 28-9.1-15 of the Rhode Island General Laws.²² The court found this statute to be unequivocal in its declaration that an arbitration panel's decision is only review-

10. *See id.*

11. *See id.* at 19.

12. *See id.*

13. 605 A.2d 837 (R.I. 1992).

14. *Providence Lodge No. 3*, 730 A.2d at 19 (citing *Betz v. Paolino*, 605 A.2d 837, 839-40 (R.I. 1992)).

15. *See id.*

16. *See id.*

17. *See id.* at 18.

18. *See id.*

19. *See id.*

20. *See id.*

21. *See id.*

22. *See id.*; R.I. Gen. Laws § 28-9.1-15 (1956) (1995 Reenactment).

able under the FFAA and the MPAA by writ of certiorari to the Rhode Island Supreme Court.²³

Secondly, the court addressed whether or not the arbitration panel had the authority to modify the COLA for the two unions.²⁴ The court held that the 1991 consent decree did not preclude the city council or an arbitration panel from modifying the COLA prospectively.²⁵ The court declared that this decision was consistent with its earlier holding in *Betz v. Paolino*.²⁶

Next, the court considered whether or not the arbitration panel had the power to make an independent judgment about the COLA to be assessed for the new contract year.²⁷ After concluding that the arbitration panel did have that authority, the supreme court found that the arbitrators erred because they failed to make an independent judgment regarding the ability of the City to pay a COLA irrespective of the COLA that the City has proposed.²⁸

Finally, the court addressed whether the FFAA and MPAA acts or an inconsistent home rule charter provision would apply in interest arbitration procedures.²⁹ The court decided that an ordinance adopted pursuant to a city's charter provisions does not limit an interest arbitration panel as a state statute could.³⁰ Similarly, the court held that the charter provision does not supersede the FFAA or the MPAA.³¹ In unison with prior decisions,³² the court found the FFAA and the MPAA to be acts of general application since they apply equally to all cities and towns, despite the fact that they may vary from one municipality to another.³³ As a result, these acts of general application were held to supersede any inconsistent home charter rules.³⁴

23. See *Providence Lodge No. 3*, 730 A.2d at 18.

24. See *id.* at 18-19.

25. See *id.* at 19.

26. 605 A.2d at 839-40 (finding that the retirement provision of the city charter gives the city council the sole authority to amend pension benefits).

27. See *Providence Lodge No. 3*, 730 A.2d at 19.

28. See *id.*

29. See *id.* at 19-20.

30. See *id.* at 20.

31. See *id.*

32. See, e.g., *Town of Lincoln v. Lincoln Lodge No. 22*, 660 A.2d 710, 719 (R.I. 1995); *City of Cranston v. Hall*, 354 A.2d 415, 417 (R.I. 1976); *Marro v. General Treasurer of Cranston*, 273 A.2d 660, 662 (R.I. 1971); *Opinion to the House of Representatives*, 87 A.2d 693, 696 (R.I. 1952).

33. See *Providence Lodge No. 3*, 730 A.2d at 20.

34. See *id.*

Therefore, the Rhode Island Supreme Court sustained the City's appeal of an earlier arbitration award, in part, on the failure of the superior court to properly procure jurisdiction to confirm or vacate the award. The court also found that this arbitration panel failed to exercise independent judgment and thus granted the petitions for certiorari and remanded the questions to the respective panels for an application of independent judgment.

CONCLUSION

In *Providence Lodge No. 3, Fraternal Order of Police v. City of Providence*, the supreme court held that an interest arbitration panel does have the authority to award COLAs, but that an arbitration panel must exercise its independent judgment in determining a city's ability to pay a COLA other than that proposed by a city. The court also determined that that an arbitration panel or the city may prospectively modify a COLA. In addition, the court held that decisions of an arbitration panel under the FFAA and the MPAA are only reviewable by petition for writ of certiorari to the Rhode Island Supreme Court. Finally, the court concluded that the FFAA and the MPAA are acts of general application and therefore supersede an inconsistent home rule charter provision.

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