

Summer 2021

## City of Cranston v. International Brotherhood of Police Officers, Local 301, 230 A.3d 564 (R.I. 2020)

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### Recommended Citation

Sasa, Jordan Z. (2021) "City of Cranston v. International Brotherhood of Police Officers, Local 301, 230 A.3d 564 (R.I. 2020)," *Roger Williams University Law Review*. Vol. 26 : Iss. 3 , Article 19.

Available at: [https://docs.rwu.edu/rwu\\_LR/vol26/iss3/19](https://docs.rwu.edu/rwu_LR/vol26/iss3/19)

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**Employment Law.** *City of Cranston v. International Brotherhood of Police Officers, Local 301*, 230 A.3d 564 (R.I. 2020). Employees’ Retirement System of Rhode Island (ERSRI)’s Retirement Board does not possess statutory authority to unilaterally retire police officers. *De facto* retirement may not be found by an officer taking on secondary employment without permission if prior officers acted similarly without repercussion. Conditional retirement offers must be fully satisfied to be binding.

#### FACTS AND TRAVEL

Daniel W. Nuey, Sr., (Nuey) was employed as a sergeant in the Cranston Police Department, and left work early on June 25, 2013, due to “uncontrollable levels of stress and anxiety.”<sup>1</sup> Subsequently, Nuey received injured-on-duty (IOD) benefits pursuant to an agreement with the City of Cranston (the City) and applied for accidental disability retirement shortly thereafter.<sup>2</sup>

Nuey’s accidental disability retirement application was denied by the ERSRI Retirement Board and was denied a second time after Nuey requested reconsideration.<sup>3</sup> Nuey then applied for ordinary disability retirement, which the Retirement Board approved on

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1. *City of Cranston v. Int’l Bhd., Local 301*, 230 A.3d 564, 565 (R.I. 2020).

2. *Id.* at 565. Nuey accepted an offer to work for the Mashpee Wampanoag Gaming Authority Board of Directors while receiving IOD benefits, but before his application for retirement was decided. *Id.* at 565–66. While communicating with Nuey, “the Department requested that Nuey have his employer send a letter describing the role and responsibilities of his secondary employment so that the Department could seek out a medical opinion. However, it is clear from the record that Nuey never provided such a letter.” *Id.* at 566 n.2.

3. *Id.* at 566. The application first went to ERSRI’s Disability Subcommittee, which voted to recommend that the Retirement Board deny Nuey’s application. *Id.* The Retirement Board accepted the recommendation and denied the application. *Id.* Upon reconsideration, the Disability Subcommittee again recommended that the Retirement Board deny Nuey’s application for accidental disability retirement. *Id.*

March 15, 2017.<sup>4</sup> Following the award for ordinary disability retirement, Nuey wrote to the City asking “[to] be put on the City’s pension roll effective end of day immediately,” but offered to retire only if the City would pay the difference between an accidental and ordinary disability pension as a supplemental pension.<sup>5</sup> The City ignored Nuey’s conditions, placed him on ordinary disability retirement, and ceased his IOD benefits on May 12, 2017.<sup>6</sup> The City rejected Nuey’s later request to withdraw his retirement offer.<sup>7</sup>

The International Brotherhood of Police Officers, Local 301 (the Union), filed this action and demanded arbitration under the collective bargaining agreement between the Union and the City.<sup>8</sup> At the trial court level, the parties disputed whether Nuey was retired, and thus whether the Union had standing to represent him.<sup>9</sup> In its memorandum, the City argued that Nuey retired as a matter of law when the Retirement Board granted his application for ordinary disability retirement, and further argued that Nuey retired *de facto* from his conduct.<sup>10</sup> The Union filed a memorandum arguing that the Retirement Board did not have statutory authority to unilaterally retire police officers and that Nuey’s conduct did not show retirement as a matter of fact.<sup>11</sup> The Union also moved to join the Municipal Employees Retirement System (MERS) as a party.<sup>12</sup> In its memorandum, MERS stated that its role was not to retire

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4. *Id.* Nuey has appealed his denied application for accidental disability retirement in the Workers’ Compensation Court; that appeal is still pending. *Id.*; *id.* at n.4; see 45 R.I. GEN. LAWS ANN. § 45-21.2-9(f) (West 2020) (a party aggrieved by the Retirement Board’s determination on an accidental disability retirement application may appeal the decision to the Workers’ Compensation Court).

5. *Id.* at 566–67 (citing CRANSTON, R.I. ORDINANCES ch. 2.20.080 (May 31, 2018), *repealed by* CRANSTON, R.I. ORDINANCES 2018-29 § 1 (Oct. 22, 2018) (where a disabled police officer was denied an accidental disability retirement but awarded an ordinary disability retirement, the City shall provide a supplemental pension to make up the difference payable to the officer directly)).

6. *Id.* at 567.

7. *Id.*

8. *Id.* The Union alleged that terminating Nuey’s IOD benefits violated the collective bargaining agreement. *Id.*

9. *Id.*; see also *id.* at 569 (citing *Providence School Board v. Providence Teachers Union, Local 958, AFT, AFL-CIO*, 68 A.3d 505, 509 (R.I. 2013)).

10. *Id.* at 568.

11. *Id.*

12. *Id.* at 567. The Union moved to join MERS as a party because the Union believed that MERS had an interest in the outcome. *Id.*

employees and produced its retirement form which was not completed or signed by Nuey, showing that he had not officially retired.<sup>13</sup>

Upon reviewing the record, the trial court found that Nuey had not retired as a matter of either law or fact.<sup>14</sup> The City then moved for reconsideration and to reopen the record, and offered an affidavit stating that the City paid \$63,346.33 to Nuey as part of a termination payment.<sup>15</sup> The Union objected to the motion and moved to compel arbitration.<sup>16</sup> The trial justice denied the City's motion and compelled arbitration.<sup>17</sup> The City appealed, arguing that the trial justice erred in finding that Nuey was not retired and that the trial justice erred in denying the City's motion for reconsideration.<sup>18</sup>

#### ANALYSIS AND HOLDING

Upon review, the Rhode Island Supreme Court first sought to determine whether Nuey retired as a matter of law or fact.<sup>19</sup> The Court first examined section 36-8-2 to determine whether the General Assembly vested the Retirement Board with the authority to unilaterally retire officers.<sup>20</sup> From the statutory language, the Court determined that the General Assembly intended the Retirement Board to determine retirement eligibility and provide retirement allowances, but the language does not give the

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13. *Id.* at 568. The MERS form requires all ERSRI members and the retiring officer to complete the form for the officer to receive an ordinary disability pension. *Id.* The form serves as a certification that the officer has terminated his or her employment and allows for proper retirement allowances to be calculated. *Id.* at 570. The MERS form was sent to Nuey after the Retirement Board approved his ordinary disability retirement application, but Nuey did not execute and return the form. *Id.* at 571.

14. *Id.* at 568.

15. *Id.* The affiant was Francesca Solitro, Payroll & Benefits Administrator for the City of Cranston. *Id.* at n.11.

16. *Id.* at 568. The Union's motion appears from the record to be an oral motion during a hearing on the City's motion for reconsideration. *Id.* at n.12.

17. *Id.* at 568–69.

18. *Id.* at 569. The City also appealed on the grounds that the trial judge erred in relying on the MERS form, but the Court does not discuss this issue at length as the Court believed that the City waived this argument. *Id.* at 574–75.

19. *Id.* at 570–71, 574–75.

20. *Id.* at 570–71 (citing 36 R.I. GEN. LAWS ANN. § 36-8-2 (West 2020)).

Retirement Board authority to unilaterally retire officers.<sup>21</sup> Although the Board must determine an employee's eligibility for retirement,<sup>22</sup> the Court views retirement as “embrac[ing] two elements: the Retirement Board's determination of the employee's eligibility, *followed by the cessation of the employee's employment.*”<sup>23</sup> The Court's interpretation coincides with the plain meaning of the word “retirement,” which the Court defines as a voluntary termination of employment.<sup>24</sup> Thus, the Court concluded that in order for Nuey to be retired as a matter of law, Nuey must take affirmative steps to terminate his own employment with the Department.<sup>25</sup> The Court found, based on the record, that Nuey did not take any affirmative steps to retire because he never returned the MERS form following the Retirement Board's approval of his application.<sup>26</sup> Therefore, the Court found that the Retirement Board did not have the statutory authority to unilaterally retire Nuey, and that Nuey did not take affirmative steps to retire as a matter of law.<sup>27</sup>

The Court next examined whether Nuey's conduct evinced retirement as a matter of fact. The City contended that Nuey showed his intent to retire by applying for a disability pension, informing the City of his intent to retire, and by working for the Mashpee Wampanoag Gaming Authority without City approval.<sup>28</sup> The Court reviewed Nuey's letter *de novo* and found that it did not show an intent to retire since the letter, on two separate occasions, expressly stated Nuey's statutorily grounded conditions for retirement, and the City rejected those conditions.<sup>29</sup>

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21. *Id.* at 571.

22. *Id.* at 570. An officer may apply for ordinary disability retirement under Rhode Island General Laws section 45-21-19(a). The Retirement Board may grant the application under section 45-21-19(c).

23. *Id.* at 571 (emphasis added).

24. *Id.* at 571–72 (citing *retirement*, BLACK'S LAW DICTIONARY (11th ed. 2019); *see also id.* at n.15 (excluding references to involuntary retirement)).

25. *See id.* at 572.

26. *See id.*

27. *See id.* at 573.

28. *Id.* at 574. The Court addressed the secondary employment issue and found that since the City had previously allowed injured officers to work while on IOD status, Nuey's work was not indicative of retirement. *Id.* at 566 at n.3.

29. *Id.* at 574; *see* CRANSTON, R.I. ORDINANCES ch. 2.20.080 (May 31, 2018), *repealed by* CRANSTON, R.I. ORDINANCES 2018-29 § 1 (Oct. 22, 2018).

Finally, the Court examined whether the trial justice erred in denying the City's motion for reconsideration and to reopen the record.<sup>30</sup> The City argued that the trial justice erred by not considering their affidavit and evidence of the termination payment in his denial of the motion.<sup>31</sup> Upon *de novo* review of the record, the Court concluded that the trial justice did consider this evidence in his order and was within his discretion to rule against the City on their motion.<sup>32</sup> Ultimately, the Court found against the City, concluding that the Retirement Board is not vested with statutory authority to unilaterally retire officers, Nuey did not retire as a matter of law or fact, and that the trial justice did not err by ruling against the City on its motion to reconsider and reopen the record.<sup>33</sup>

## COMMENTARY

The Rhode Island Supreme Court's ruling set clear boundaries on the scope of the Retirement Board's authority and restates the burden on municipalities to follow statutory retirement procedure. While the Court acknowledged the legislative intent for the Retirement Board to hold an integral role, it also found from the statutory language that the Board's authority ends at determining retirement eligibility.<sup>34</sup> After the Retirement Board approves a request for retirement, an officer seeking retirement "must then complete various tasks, including the execution and filing of certain forms" to terminate employment.<sup>35</sup> This reinforces the notion that retirement is a volitional act performed by the officer in question, not the municipality. Thus, the ruling in this case places a burden on the municipality to strictly follow statutory procedure and its own ordinances for officer retirement.

The Court also disposed of the City's argument that taking on secondary employment is indicative of retirement.<sup>36</sup> The Court acknowledged that Nuey breached Department rules by taking on secondary employment without securing a medical opinion, but the Court found that previous officers had done the same without

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30. *Id.* at 575.

31. *Id.*

32. *Id.*

33. *Id.* at 576.

34. *Id.* at 570–71; see 36 R.I. GEN. LAWS ANN. § 36-8-2 (West 2020).

35. *Id.* at 570.

36. *Id.* at 574.

repercussion.<sup>37</sup> Disposing of these facts and the inference therefrom may make it difficult for a municipality to show *de facto* retirement. Thus, this ruling implicitly places more weight on legal retirement and the completion of forms terminating employment, such as the MERS form.

As such, the Rhode Island Supreme Court in this case sought to enforce the Union's rights and hold municipalities accountable for failing to follow statutory procedure. The ruling also gives great leverage to officers in negotiating their retirement terms.<sup>38</sup> An officer may impose conditions on their retirement pursuant to local ordinances, and a municipality may not simply ignore them when retiring the officer.<sup>39</sup> Thus, even if an officer negotiates retirement with a municipality, but their conditions for retirement are ignored, the officer may seek arbitration and be represented by their suzerain union. This case displays the Rhode Island Supreme Court's position on protecting police officers and ensuring them an opportunity to redress grievances encountered in retirement proceedings. However, it is unclear whether this decision may apply to disputes involving other unions or professions.

#### CONCLUSION

The Rhode Island Supreme Court held that the Employees' Retirement System of Rhode Island Retirement Board does not possess the statutory authority to unilaterally retire police officers. The Court determined that the legislature solely intended for the Retirement Board to determine retirement eligibility and calculate retirement and pension allowances. The Court further determined that an officer taking on secondary employment, even without permission, may not constitute *de facto* retirement if the municipality allowed previous officers to do so without repercussion. Finally, the Court determined that a municipality

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37. *See id.* at 566, n.3.

38. *See id.* at 574.

39. *See id.*; *see also* CRANSTON, R.I. ORDINANCES ch. 2.20.080 (May 31, 2018), *repealed by* CRANSTON, R.I. ORDINANCES 2018-29 § 1 (Oct. 22, 2018).

may not retire an officer while ignoring the officer's conditions for retirement if those conditions are grounded in local ordinances.

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