

# Roger Williams University Law Review

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Volume 28  
Issue 3 Vol. 28, No. 3: Summer 2023

Article 30

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Summer 2023

## Ricci v. Rhode Island Commerce Corp., 276 A.3d 903 (R.I. 2022)

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### Recommended Citation

Weeden, Mark (2023) "Ricci v. Rhode Island Commerce Corp., 276 A.3d 903 (R.I. 2022)," *Roger Williams University Law Review*: Vol. 28: Iss. 3, Article 30.

Available at: [https://docs.rwu.edu/rwu\\_LR/vol28/iss3/30](https://docs.rwu.edu/rwu_LR/vol28/iss3/30)

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**Employment Law.** *Ricci v. Rhode Island Commerce Corp.*, 276 A.3d 903 (R.I. 2022). The Rhode Island Law Enforcement Officers’ Bill of Rights (LEOBOR) is a law shielding specifically enumerated public servants from discipline and public disclosure for certain conduct. The law covers the Deputy Chief; however, the law excludes the following positions: Chief and the highest-ranking sworn officers of a department, which includes a formally recognized Acting Chief and the Director and Deputy Director of the Rhode Island Airport Corporation (RIAC).

#### FACTS AND TRAVEL

Helen Ricci, the plaintiff, was hired as the Deputy Chief of the Rhode Island Airport Police Department (RIAPD) by the RIAC in December 2019.<sup>1</sup> The then Chief of the RIAPD retired a few months after Ms. Ricci swore in as the new Deputy Chief.<sup>2</sup> The position of Chief was vacant until mid-November 2020; however, Ms. Ricci was neither promoted to Chief nor formally recognized as Acting Chief.<sup>3</sup> In fact, the RIAC and the RIAPD terminated<sup>4</sup> Ms. Ricci on November 10, 2020.<sup>5</sup>

Ms. Ricci filed suit arguing that (1) she was eligible for coverage according to the LEOBOR and (2) RIAPD’s failure to respond to her request for a hearing amounted to a dismissal of the charges against her.<sup>6</sup> Additionally, Ms. Ricci asked for injunctive relief to

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1. *Ricci v. Rhode Island Commerce Corp.*, 276 A.3d 903, 904 (R.I. 2022).

2. *Id.*

3. *Id.*

4. The reason for Ms. Ricci’s termination was not relevant to the outcome of the case.

5. *Ricci*, 276 A.3d at 904.

6. *Id.*; see also 42 R.I. GEN LAWS § 42-28.6-4(a) (1956) (“If the investigation or interrogation of a law enforcement officer results in the recommendation of some action, such as demotion, transfer, dismissal, loss of pay, reassignment, or similar action which would be considered a punitive measure, then, before taking such action, the law enforcement agency shall give notice to the law enforcement officer that he or she is entitled to a hearing on the issues by a hearing committee.”) (emphasis added).

reinstate her to her former position, including back pay and benefits she would have earned absent her termination.<sup>7</sup>

The Rhode Island Commerce Corporation (RICC), the RIAC, the RIAPD, Dennis Greco, and Iftikhar Ahmad (collectively defendants) moved for summary judgment.<sup>8</sup> The defendants argued that Ms. Ricci was the “highest ranking officer” according to the LEOBOR<sup>9</sup> and thus was excluded from the statute’s protection.<sup>10</sup>

On January 5, 2021, there was a hearing concerning the defendants’ motion for summary judgment.<sup>11</sup> The defendants echoed the same argument they used as the bases for their motion; LEOBOR protection does not extend to Ms. Ricci.<sup>12</sup> On the other hand, Ms. Ricci argued that according to the statute, the Director and Deputy Director at the RIAC were the highest-ranking officers, and she was a “law enforcement officer” entitled to protection.<sup>13</sup>

The trial court denied the motion for summary judgment because there were still genuine disputes regarding material facts.<sup>14</sup> Indeed, Ms. Ricci’s interpretation of the statute excluded the positions of Chief and “highest ranking officer” from its protection, which in this case refers to the deputy director and the director of

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7. *Ricci*, 276 A.3d at 904. A preliminary injunction was a big ask from Ms. Ricci because she bore the heavy burden of proving that she “[was] likely to succeed on the merits, that [she was] likely to suffer irreparable harm in the absence of preliminary relief, that the balance of equities tip[ped] in [her] favor, and that an injunction [was] in the public interest.” See *Winter v. Natural Resources Defense Council, Inc.*, 555 U.S. 7, 20 (2008).

8. *Ricci*, 276 A.3d at 904.

9. The specific section of the LEOBOR in question states the following regarding which officers qualify for coverage:

*‘Law enforcement officer’* means any permanently employed city or town police officer, state police officer, permanent law enforcement officer of the department of environmental management, or those employees of the airport corporation of Rhode Island who have been granted the authority to arrest by the director of said corporation. However, this shall not include the chief of police and/or the highest ranking sworn officer of any of the departments including the director and deputy director of the airport corporation of Rhode Island.

42 R.I. GEN. LAWS § 42-28.6-1(1) (1956).

10. *Ricci*, 276 A.3d at 904-05.

11. *Id.* at 905.

12. *Id.*

13. *Id.*

14. *Id.*

the RIAC.<sup>15</sup> Furthermore, because she held neither of the excluded positions, she was a “law enforcement officer” according to the statute and thus afforded its protections.<sup>16</sup>

In opposition, the defendants argued that the director of RIAC had far less authority than an officer with the RIAPD.<sup>17</sup> Also, the law was silent on whether the highest-ranking officer referred to the director.<sup>18</sup> Furthermore, “LEOBOR was intended to ‘protect line officers’ while excluding ‘those who truly manage them.’”<sup>19</sup> As such, because Ms. Ricci managed officers, the LEOBOR protections did not extend to her.<sup>20</sup>

The trial court held that according to the LEOBOR, Ms. Ricci was a law enforcement officer entitled to its protection.<sup>21</sup> On its face, the law did not include Ms. Ricci’s position of Deputy Chief in its definition.<sup>22</sup> Moreover, when the defendants terminated Ms. Ricci’s employment, the position of Chief was still vacant, and the highest-ranking sworn officer was the director of RIAC.<sup>23</sup> Accordingly, the trial court granted declaratory and injunctive relief in favor of Ms. Ricci, ordering the defendants to reinstate her to her position with back pay and benefits.<sup>24</sup> The defendants appealed to the Rhode Island Supreme Court.<sup>25</sup>

#### ANALYSIS AND HOLDING

The Rhode Island Supreme Court conducted a *de novo* review because it was a question of statutory construction.<sup>26</sup> The Court held that Section 42-28.6-1(1) was “unambiguous” and did not

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15. *Ricci*, 276 A.3d at 905.

16. *Id.*

17. *Id.*

18. *Id.*

19. *Id.*

20. *Ricci*, 276 A.3d at 905.

21. *Id.* at 906.

22. *Id.*

23. *Id.*

24. *Id.*

25. *Id.*

26. *Ricci*, 276 A.3d at 906 (first citing *In re Kapsinow*, 220 A.3d 1231, 1233 (R.I. 2019); and then citing *DeMarco v. Travelers Ins. Co.*, 26 A.3d 585, 616 (R.I. 2011)).

exclude Ms. Ricci from LEOBOR coverage.<sup>27</sup> Ms. Ricci only ever held the rank of Deputy Chief of police at the RIAPD.<sup>28</sup> The Court reasoned that because the legislature chose to exclude specific positions when creating this law, Ms. Ricci's position needed to be expressly listed for the Court to rule in favor of the defendants.<sup>29</sup> Indeed, the judicial branch interprets it does not create law.<sup>30</sup>

However, the statute excludes "the highest ranking sworn officer" from protection.<sup>31</sup> Ms. Ricci was not the highest-ranking sworn officer because she was not "designated as Acting Chief," per the Court.<sup>32</sup> Additionally, the "highest ranking sworn officer" is a title; thus, the law would still protect Ms. Ricci even if she engaged in conduct regularly performed or known to be performed by the Chief of police because her rank and title were not listed.<sup>33</sup> Moreover, the definition of "law enforcement officer" uses the word "any" prior to listing a select few positions excluded from coverage, resulting in the Court's conclusion that "[t]he entire scope of LEOBOR statute is expansive and broad."<sup>34</sup>

Finally, the Court held that trial courts should interpret the LEOBOR liberally upon the request of a challenger because the law is remedial.<sup>35</sup> In other words, narrowly construing the LEOBOR amounts to a punitive result on these facts when the legislature intended to broaden, not limit, law enforcement rights "as a class."<sup>36</sup>

Thus, trial courts should conduct interpretations of ambiguity concerning the LEOBOR through an originalist lens to comport

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27. *Id.*; "Although it is unnecessary for us to discuss the point at length, we would simply comment that we would have reached the same conclusion as to the import of the statutory language at issue if we had deemed it to be ambiguous." *See id.* at 907 n.7 (citing *Sauro v. Lombardi*, 178 A.3d 297, 305 (R.I. 2018)).

28. *Id.* at 907.

29. *Id.* (citing *Murphy v. Murphy*, 471 A.2d 619, 622 (R.I. 1984); *see also id.* at 907 n.8.

30. *See id.* at 908 (citing *Brown & Sharpe Mfg. Co. v. Dean*, 151 A.2d 354, 358 (1959)).

31. *Ricci*, 276 A.3d at 908.

32. *Id.*

33. *Id.*

34. *Ricci*, 276 A.3d at 909.

35. *Id.*

36. *Id.*

with the law's remedial purpose.<sup>37</sup> Indeed, according to the defendants, Ms. Ricci was a devoted public servant who took on the supervisory duties of the Chief of police without the accompanying title and pay; thus, the Court concluded that excluding Ms. Ricci from LEOBOR for her passion and dedication to the police department and justice was likely not the legislature's intent.<sup>38</sup> As such, the Court affirmed most of the Superior Court's order; however, it vacated the mandatory injunction because it was no longer necessary.<sup>39</sup>

## COMMENTARY

Ms. Ricci was taken advantage of by the police department. The defendants asked her to perform the Chief's duties in addition to her own, and she complied. The defendants asked her to take on more work and pressure from the highest position in the police department for the same pay, and she complied. She was provided a seat at the table for the executive decision-making process at the police department without the title of Chief, and she complied. When relieved from duty, Ms. Ricci sought a hearing pursuant to the LEOBOR, but the defendants denied her request.

In *Star Wars: Episode III—Revenge of the Sith*, Jedi Master Mace Windu told Jedi Knight Anakin Skywalker, “[y]ou are on this Council, but we do not grant you the rank of Master.”<sup>40</sup> Anakin's appointment, like Ms. Ricci's, was at a time most convenient to the Jedi Council.<sup>41</sup> Ms. Ricci's appointment was due to the prior Chief's retirement. Anakin's appointment to the Jedi Council was because they hoped to exploit Chancellor Palpatine's trust in him; however, they thought he was too young, hot-headed, and arrogant to grant him the rank of Master.<sup>42</sup> In both situations, the principle is the same: unequal power between the parties. The police department,

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37. *Id.*

38. *Ricci*, 276 A.3d at 909.

39. *Id.* (the Court “instruct[ed] that [the Superior Court] order compliance with the provisions of § 42-28.6-4 and restoration of Ms. Ricci's salary and benefits to the *status quo ante*. At the same time, [the Court] vacated the mandatory injunction that was previously granted (and subsequently stayed) by the hearing justice.”).

40. *STAR WARS: EPISODE III – REVENGE OF THE SITH* (Lucasfilm Ltd. 2005).

41. *See id.*

42. *See id.*

like the Jedi Council, satisfied their selfish desires by employing an interim agent with the same duties and responsibilities as a prestigious position. In both cases, the invitee likely expected the interim position to turn into a full-time offer and was understandably upset when it did not. In fact, most internship relationships begin so that the potential employee and the employer can determine whether they want to work together; resentment ensues when either party does not communicate their expectations. However, luckily for the defendants, Ms. Ricci did not turn to the dark side as did Anakin; she instead remained passionate and dedicated to her position at the police department. The issue here has less to do with how the defendants handled Ms. Ricci and more with how police departments treat their employees considering this statute. The Court focuses on interpreting LEOBOR; however, it is important to mention that this lawsuit was avoidable. Had the police department communicated its intention not to promote Ms. Ricci when selecting her as interim Chief, she may have never accepted, which is likely why the department did not communicate this to her.

Furthermore, had she accepted, she likely would have returned to her previous role without filing suit; in other words, she would not have needed to invoke the LEOBOR because she would still be working for the department. Understanding and flexibility on the defendants' part when they required Ms. Ricci to step down may have prevented her from seeking out LEOBOR protections, and the police department would still have a dedicated public servant in their employment. As such, the LEOBOR protected Ms. Ricci while in the position of Deputy Chief, and the defendants wrongfully terminated her because they failed to grant her request for a hearing that she was entitled to as a law enforcement officer.

The Court was correct to practice judicial restraint here. If a defendant wants the law to change, they must take it up with the legislative branch. Indeed, the principle behind the separation of powers is checks and balances, which cannot happen if the Court is making the law. The proper order of things is for the legislature to pass the laws and the courts to interpret them as the legislature intended. Thus, if the Court had done as the defendants asked and included a position not listed, what would it take to stop the floodgates from opening? Future defendants would come asking to exclude more positions from LEOBOR protection. Next time, a defendant should save the ask for the legislature and not the courts.

CONCLUSION

The section of the LEBOR defining a “law enforcement officer” is clear and unambiguous.<sup>43</sup> Accordingly, the positions of Chief, a formally recognized Acting Chief, and the Director and Deputy Director of the RIAC are excluded from coverage by the LEOBOR.<sup>44</sup> However, the position of Deputy Director falls under “law enforcement officer,” and the LEOBOR’s coverage extends to the officer occupying the position.<sup>45</sup>

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43. *See Ricci*, 276 A.3d at 907-08.

44. *See id.* at 908-09.

45. *Id.* at 909.