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'Game-changer' R.I. Supreme Court ruling on municipal department operations

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Jul 7, 2022

NORTH PROVIDENCE – A Rhode Island Supreme Court decision seen by town officials as critical to proper management of the North Providence Police will have far-reaching implications for all cities and towns in the state, they say.

The court last week vacated the judgment in Superior Court and overturned an arbitrator's ruling in the case, finding that the arbitrator's award in the case failed to draw its essence from the contract, disregarded relevant provisions of the collective bargaining agreement with the local police union, and produced "completely irrational" results.

"We hold that the arbitrator 'so imperfectly executed' his authority such that he did not provide "a mutual, final, and definite award upon the subject matter," it states.



The case, *Town of North Providence v. Fraternal Order of Police*, related to a grievance from the local police union disputing the town's authority to leave a position vacant.

Lombardi applauded "brilliant" labor attorney Vincent Ragosta Jr., saying this is a "game-changer" in public sector labor law for all cities and towns in being able to responsibly run their municipal departments. The mayor said he welcomes the "thoughtful and incisive analysis" delivered by the justices and is grateful for the advocacy and representation by Ragosta.

Lombardi said he values the court's recognition of the town's "indispensable managerial rights to design and structure the units of its Police Department, control general staffing decisions, and prudently deploy police officers where and when most needed."

The ruling upholds a municipal employer's prerogative to determine whether and when to fill vacancies in a department, said Lombardi,

who is president of the R.I. League of Cities and Towns and said he has heard from many municipal leaders applauding the outcome of the case.

"Today's ruling should be instructive to all Rhode Island municipalities and their respective public sector unions," he said.

The mayor said it was disappointing that the arbitrator didn't originally side with North Providence, and when the Superior Court also didn't side with the town, he said he turned to Ragosta and said "I can't digest this."

"Where I come from in business, this just isn't right," he said.

Ragosta said he came back to the town to do labor relations in 2007 after previously doing some work under former Mayor Dick Fossa, after Sal Mancini. He said they worked to try to restore some managerial control back then. Under Mayor Ralph Mollis, he said, "things went sideways" and those in leadership didn't pay much attention to contracts or language.

At one point, the relationship with the FOP was very contentious, said Ragosta, and the town prevailed over a grievance related to ending take-home cars.

“That was really a shift in terms of the nature of the relationship,” he said, adding that from there they started taking a look at the collective bargaining contract and found that management rights were weak, and the sides mutually wanted to beef them up.

One of the moves they made, which was key to this case, was a management clause making it clear that the town would be able to essentially structure the department. But a subsequent sentence in the collective bargaining agreement diluted the language, stating that reduction in ranks and/or department strength is prohibited, a provision that was to sunset in June of 2013.

“On one hand the union was agreeing that the town had the ability to make changes, but the next sentence took it away,” said Ragosta. “It was almost a mirage of a management rights clause.”

When he took over, he said, he told the union that the contract was contrary to the charter and that management had fundamental rights to respond to critical public safety needs, including increasing or decreasing the size of the department or units.

“That was a big, big, big fight,” he said. As of June 2013, it was to no longer be in effect.

Fast forward a few years, and the union filed a grievance after a detective retired, asserting that under the contract, since the vacancy was created when the detective retired, management had to fill it. The position of the mayor and chief was that they could do with one fewer employee. An arbitrator then went against them, but Lombardi, said Ragosta, wasn't about to give up organizational control. Not many mayors would have taken on this challenge, he said.

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Ragosta said Superior Court is deferential to arbitrators, but he was told by the judge at that level in the process that he had given her pause due to the compelling nature of his arguments.

The bottom line, said Ragosta, was that the union equated creation of a vacancy with recognition of a vacancy. The 45-day provision to fill the vacancy starts only when the town recognizes the vacancy, requiring some type of affirmative action. Creation of the vacancy is different from recognizing it for the purposes of filling it.

"There's a distinction between creation and recognition," he said.

Ragosta said the decision is very gratifying to him, as it's the argument they've been making for a long time.

"This is a fundamentally sound provision for management for most of the cities and towns, and I've heard from some of my colleagues,

and some who represent unions that this really is a game-changer," he said, applying not only to police, but any division of municipal government. "It took a pretty long journey to ultimately get vindication."

This was a case about boundaries, he said, limits on what labor should be allowed to do and maintaining core managerial functions related to the design and structure of an agency.

Lt. Tom Jones, head of the local police union said his hope is that the sides "can continue to communicate, collaborate, and compromise as we have continuously done during my presidency."

As it relates to the filing of vacant positions, he said, "I'm confident the administration understands that filing vacant positions contributes to effective public safety practices to our citizens, and accountability in ensuring supervisory positions are filled when vacant."

Policing today is under much scrutiny and a lot of that debate revolves around police reform and accountability, added Jones.

"It would be negligent at this moment in time to allow supervisory positions and investigative positions to not go filled as a result of a ruling such as this," he said. "With that being said, the FOP has always been willing to work with the administration to provide solutions to problems which we can solve together. In this area we both have a vested interest in ensuring our citizens get the best police services that we can provide them."

He said he's confident this ruling will not hinder public safety or effective police services, and they will continue to work together with Chief Alfredo Ruggiero.