



**ARIZONA SUPREME COURT
ORAL ARGUMENT CASE SUMMARY**



**WILLIAM R. CHEATHAM v. SAL DICICCIO, et al.
CV-15-0287-PR**

PARTIES:

Petitioner: Phoenix Law Enforcement Association.

Respondents: William R. Cheatham and Marcus Huey.

FACTS:

Phoenix Law Enforcement Association (“PLEA”) is a labor organization that represents Phoenix police officers employed in Unit 4, a city division consisting of 2,500 police officers below the rank of sergeant. Nearly 90% of the officers in Unit 4 are members of PLEA. PLEA advocates for its members by negotiating contracts with the City and representing members in administrative, civil and criminal proceedings.

Every other year, the City and PLEA negotiate a Memorandum of Understanding (“MOU”) covering a two-year period. MOUs govern the officers’ wages, hours, and other conditions of employment. The MOU is submitted to the Phoenix City Council for approval. This process began in 1977. Every agreement since then has included provisions for “release time,” which is “the practice of relieving police officers from police duties to perform PLEA activities and conduct PLEA business.” Op. ¶ 3. There are four different categories of release time. The first category authorizes six full-time police officers to receive full pay and benefits with some number of hours of overtime per year. The second category creates a bank of release time hours per year for other officers to be released from their police duties for “legitimate association business,” including negotiations with the City. The third category allots paid leave each year for officers to attend PLEA seminars, lectures, and conventions. The fourth category authorizes officers to serve as legislative representatives, and allots release time hours for officers performing that function to represent PLEA.

In 2011, William R. Cheatham and Marcus Huey (collectively, “Cheatham”) sued the City challenging the 2010-12 MOU release time provisions, contending that the release time provisions were unconstitutional under the Gift Clause, Arizona Constitution Article 9, § 7. In June 2012, following an evidentiary hearing, the trial court entered a preliminary injunction enjoining the 2010 MOU release time provisions. Among other problems, the court concluded that PLEA did not provide adequate consideration for the benefit it received under the agreement because it was not required to perform any specific service or give anything in return in exchange for the compensation and benefits the City gave to PLEA for release time.

Shortly after the preliminary injunction was entered, the 2012-14 MOU became effective.

Cheatham filed an amended complaint challenging the 2012-14 MOU release time provisions. After another evidentiary hearing, the trial court concluded that these provisions violated the Gift Clause and preliminarily enjoined the 2012-14 MOU release time provisions.

In January 2014, the trial court held a bench trial on Cheatham's request for a permanent injunction. As explained in paragraph 8 of the Opinion,

The City and PLEA argued that the provisions should not be analyzed under the Gift Clause because release time was a benefit – part of the officers' compensation package – not a payment or subsidy. The court rejected that argument because: (1) the MOU did not classify release time as compensation; (2) compensation was a mandatory subject of bargaining in the MOUs, whereas release time was not; (3) the City did not treat release time as compensation; and (4) city funds for release time were designated for PLEA, not the officers.

The trial court concluded that the release time provisions violated the Gift Clause, both because release time did not serve a public purpose, and because PLEA did not provide adequate consideration for the approximately \$1.7 million the City paid for the release time provisions in the 2012-14 MOU. The court noted that the 2012-14 MOU imposed no duties on PLEA, and that the City had no control over how release time would be used. The court entered a permanent injunction enjoining the City and PLEA from entering into future MOUs or agreements with release time, unless the MOU or agreement provided a public benefit in obligatory language, and required PLEA to reimburse the City for release time that did not directly benefit the City.

The City and PLEA timely appealed. The Court of Appeals affirmed the trial court's ruling, with minor modifications. PLEA filed a Petition for Review in this Court.

ISSUES:

1. For the period covering the 2012-2014 Memorandum of Understanding between the City of Phoenix and Unit 4, the City allocated a total compensation package of approximately \$660 million for Unit 4. During negotiation for the 2012-2014 MOU, the City and Unit 4's authorized representative, the Phoenix Law Enforcement Association, agreed that a portion of the total compensation package would be allocated for release time benefits in lieu of receiving higher wages or other increased benefits. Therefore, rather than being a "gift" to a public entity in violation of Arizona's Gift Clause, release time is a negotiated benefit belonging to Unit 4 members as part of their total employment compensation package. Did the court of appeals err in summarily rejecting this argument?

2. The 2012-2014 Memorandum of Understanding is an employment contract between the City of Phoenix and Unit 4. In exchange for agreeing to serve as police officers for the City, Unit 4 members receive compensation in the form of wages and other benefits. One of those benefits is release time, whereby certain Unit 4 members are paid to represent Unit 4 in various aspects related to their

employment through Unit 4's authorized representative, the Phoenix Law Enforcement Association. Release time benefits cost the City approximately \$1.7 million dollars over a two-year period, or \$322 per year per unit member. Did the court of appeals err in (1) requiring that the consideration for release time benefits under the 2012-2014 MOU be provided by PLEA instead of Unit 4 and (2) holding that the benefit received by the City in exchange for the payment of release time benefits was grossly disproportionate?

RELEVANT CONSTITUTIONAL PROVISION

Arizona Constitution Article 9, § 7 provides:

Neither the state, nor any county, city, town, municipality, or other subdivision of the state shall ever give or loan its credit in the aid of, or make any donation or grant, by subsidy or otherwise, to any individual association, or corporation, or become a subscriber to, or a shareholder in, any company or corporation, or become a joint owner with any person, company, or corporations, except as to such memberships as may accrue to the state by operation or provision of law or as authorized by law solely for investment of the monies in the various funds of the state.

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