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IN THE SUPREME COURT OF FLORIDA

CASE NO. 83,212

CITY OF MIAMI,

Petitioner,

vs.

JAMES P. GILBERT,

Respondent.

On Review of a Certified Questions from the
First District Court of Appeal

INITIAL BRIEF OF PETITIONER

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II.

THE CITY SHOULD NOT BE SUBJECTED TO THE 10% PENALTY FOR ITS FAILURE TO PAY A COMPENSATION CLAIM WHERE A RETROACTIVE "BARRAGAN" PAYMENT DOES NOT CONSTITUTE "COMPENSATION" OR "AN INSTALLMENT OF COMPENSATION" FOR PURPOSES OF SECTION 440.20, FLA. STAT.

III.

THE CITY SHOULD NOT BE SUBJECTED TO PAY PREJUDGMENT INTEREST FOR ITS FAILURE TO PAY A COMPENSATION CLAIM WHERE A RETROACTIVE "BARRAGAN" PAYMENT DOES NOT CONSTITUTE "COMPENSATION" FOR PURPOSES OF SECTION 440.20, FLA. STAT.

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INTRODUCTION

This is another case where a claimant filed a claim in the workers' compensation tribunal as a result of the Court's decision issued in City of Miami v. Barragan, 545 So. 2d 252 (Fla. 1989). The Court recently issued an opinion wherein it concluded that "our decision in Barragan has no effect on the amount of disability payments owed by the City to pensioners except for those payments accruing after the effective date of that decision." City of Miami v. Bell, 19 Fla. L. Weekly S108, S109 (Fla. March 3, 1994).[1] (A. 3-4). As of the time of service of the instant brief on April 4, 1994, the Court had not disposed of the Respondents' motion for rehearing or clarification filed March 18, 1994.

In the instant case, the City filed a motion to suspend briefing schedule and to enter a decision which conforms to the Court's decision in Bell. Claimant objected to the motion and the Court, by order dated March 14, 1994, ordered the City to serve its brief on or before April 4, 1994.

STATEMENT OF THE CASE AND FACTS

James Gilbert, a firefighter and paramedic employed by the City of Miami, suffered a compensable accident on May 13, 1976.

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[1] The Court consolidated Bell with ten other cases: City of Miami v. Arostegui, No. 80,560; City of Miami v. McLean, No. 80,575; City of Miami v. Meyer, No. 80,652; City of Miami v. Thomas, No. 80,683; City of Miami v. Fair, No. 80,728; City of Miami v. Hickey, No. 80,981; City of Miami v. Leibnitzer, No. 80,998; City of Miami v. King, No. 80,999; City of Miami v. Paredes, No. 81,340; City of Miami v. Daugherty, No. 81,554.

(R. 6, 12). The City accepted Gilbert as permanently and totally disabled, with a weekly compensation rate of $112.00. (R. 2, 354). Gilbert was granted a service-connected disability pension on December 18, 1976. (R. 6, 354). His gross disability pension was offset by $485.33 monthly until August 1, 1989. (R. 354). This offset amount, together with interest, penalties, costs and attorney's fees, constitutes the amount in dispute in this appeal.

After the Court's decision in Barragan v. City of Miami, 545 So. 2d 252 (Fla. 1989), Gilbert filed a claim for reimbursement of his pension offset, together with interest, penalties, costs and attorney's fees on November 15, 1989. (R. 40, 354). The City defended, inter alia, on the basis that the Barragan decision should not be applied retroactively to entitle Gilbert to reimbursement. (R. 15, 40).

A Judge of Compensation Claims rejected the City's defenses, awarded Gilbert permanent total disability benefits of $112.00 per week for the offset period, and further awarded a 10% penalty, interest on the benefits awarded, costs and attorney's fees. (R. 352-60). The First District Court of Appeal affirmed the award in toto, but certified to the Court the same questions certified in City of Miami v. Bell, 606 So. 2d 1183 (Fla. 1st DCA 1992) and City of Miami v. McLean, 605 So. 2d 953 (Fla. 1st DCA

1992).[2] City of Miami v. Gilbert, 19 Fla. L. Weekly D236 (Fla. 1st DCA February 1, 1994)(A. 1). The First District also certified a third question for the Court's consideration: "whether the payment of benefits constituted 'compensation' for purposes of the award of interest." Id. (A. 1).

ISSUES ON REVIEW

I.

WHETHER THE JUDGE OF COMPENSATION CLAIMS ERRED IN APPLYING BARRAGAN V. CITY OF MIAMI, 545 So. 2d 252 (Fla. 1989) RETROACTIVELY WHERE SAID DECISION OVERRULED NUMEROUS APPELLATE PRECEDENTS UPON WHICH THE CITY RELIED TO ITS DETRIMENT.

II.

WHETHER THE CITY SHOULD BE SUBJECTED TO THE 10% PENALTY FOR ITS FAILURE TO PAY A COMPENSATION CLAIM WHERE A RETROACTIVE "BARRAGAN" PAYMENT DOES NOT CONSTITUTE "COMPENSATION" OR "AN INSTALLMENT OF COMPENSATION" FOR PURPOSES OF SECTION 440.20, FLA. STAT.

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[2] In Bell, the First District certified the following question: Is Section 440.20(7), applicable under the circumstances of this case, and if so, can the City of Miami, be legally excused from paying a penalty pursuant to that section on the amount of pension offset monies withheld in the past because the City did so in good faith reliance on the validity of the City ordinance authorizing the pension offset in view of the appellate decisions approving its validity? In McLean, the First District certified another question: whether an increase in workers' compensation benefits, awarded pursuant to section 440.21 to offset illegal deductions from an employee's pension fund, in accordance with Barragan v. City of Miami, 545 So. 2d 252 (Fla. 1989), constitutes "compensation" for purposes of Section 440.20, Florida Statutes?

III.

WHETHER THE CITY SHOULD BE SUBJECTED TO PAY PREJUDGMENT INTEREST FOR ITS FAILURE TO PAY A COMPENSATION CLAIM WHERE A RETROACTIVE "BARRAGAN" PAYMENT DOES NOT CONSTITUTE "COMPENSATION" FOR PURPOSES OF SECTION 440.20, FLA. STAT.

SUMMARY OF ARGUMENT

This case is governed by the Court's recent decision in City of Miami v. Bell and the consolidated cases wherein the Court held that it would be "fiscally unjust" to the taxpayers of the City of Miami to apply the Barragan decision retroactively against it. There is no reason to deviate from Bell in this case.

The second and third issues pertain to the propriety of assessing penalties and interest under the circumstances, which further drains the taxpayers where the City had no control over the conditions of nonpayment, i.e., it was operating in accordance with the judicial determinations which upheld its right to take the offset. However, these issues need not be reached given the Court's conclusion that Barragan is not to be applied retroactively against the City.

ARGUMENT

I.

THE JUDGE OF COMPENSATION CLAIMS ERRED IN APPLYING BARRAGAN V. CITY OF MIAMI, 545 So. 2d 252 (Fla. 1989) RETROACTIVELY WHERE SAID DECISION OVERRULED NUMEROUS APPELLATE PRECEDENTS UPON WHICH THE CITY RELIED TO ITS DETRIMENT.

This case is controlled by the Court's very recent decision in City of Miami v. Bell, 19 Fla. L. Weekly, S108 (Fla. March 3,

1994). Just like Bell and the other consolidated cases, the first and most fundamental issue in this case is the retroactivity of the Barragan decision. This issue not only affects Gilbert, but numerous other claimants seeking retroactive reimbursement for pre-Barragan disability pension offsets.[3,4]

As the Court will recall from the briefs filed in Bell and the ten other cases, the City reduced disability pension benefits for its retired employees in an amount equal to workers compensation benefits to which they were entitled for the same disabling event, based on an ordinance originally adopted by the City of Miami in 1940. This action by the City was challenged in eight lawsuits, and in each case this Court, the Third District or the First District held that the City's offsets were proper.[5]

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[3] Six offset reimbursements have been paid, aggregating almost $700,000, as a consequence of the Court's denial of review in City of Miami v. Burnett, Case No. 79,925; City of Miami v. Pierattini, Case No. 79,926; City of Miami v. Johnson, Case No. 79,927; City of Miami v. Majewski, Case No. 79,928; City of Miami v. Moye, Case No. 79,951; and City of Miami v. Ogle, Case No. 80,055. The first of these cases, oddly, was one of the two decisions which held the Court's 1989 ordinance invalidation decision to be retroactive.

[4] There are still a few cases pending in this First District Court of Appeal and some claims pending before Judges of Compensation Claims. In Bell and the 10 cases consolidated with it, the Court denied the City's request to stay these various proceedings pending the outcome of the consolidated cases.

[5] City of Miami v. Graham, 138 So. 2d 751 (Fla. 1962); City of Miami v. Giordano, 526 So. 2d 737 (Fla. 1st DCA 1988); City of Miami v. Barragan, 517 So. 2d 99 (Fla. 1st DCA 1987), rev'd, 545 So. 2d 252 (Fla. 1989); City of Miami v. Knight, 510 So. 2d 1069 (Fla. 1st DCA 1987), rev. denied, 518 So. 2d 1276 (Fla. 1987); Thorpe v. City of Miami, 356 So. 2d 913 (Fla. 3d DCA 1978);, cert. denied, 361 So. 2d 836 (Fla. 1978); West v. City of Miami, 341 So. 2d 999 (Fla. 3d DCA 1976), cert. denied, 355 So. 2d 518 (Fla. 1978); Hoffkins v. City of Miami, 339 So. 2d 1145 (Fla. 3d DCA 1976), cert. denied, 348 So. 2d 948 (Fla. 1977); and City of Miami v. West, IRC Order 2-2647 (May 22, 1974), cert. denied, 310 So. 2d 304 (Fla. 1975).

In 1989, the Court held the City's ordinance to be invalid as of 1973, without expressing an opinion whether that invalidation applied both prospectively and retroactively, or only prospectively. Barragan v. City of Miami, 545 So. 2d 252 (Fla. 1989).

The Court concluded in Bell and the consolidated cases that the "Barragan [decision] has no effect on the amount of disability payments owed by the City to pensioners except for those payments accruing after the effective date of that [Barragan] decision."[6] 19 Fla. L. Weekly at S109. The Court noted in Bell that retroactive application of the Barragan decision against the City would impose a staggering financial blow to the taxpayers of Miami, based on a multitude of present and potential claims for after-the-fact recoupments of offset sums. In contrast, the Court noted that "present and future benefits" required under Barragan "can be adjusted without serious financial consequence for City taxpayers...." 19 Fla. L. Weekly S109.

The Court astutely noted that "[h]olding the City liable for past offsets would require a reallocation of municipal services and subject today's taxpayers to yesterday's fiscal obligations" and opined that it would be "fiscally unjust" to the City taxpayers to require payment of back benefits for prior years. 19 Fla. L. Weekly at S109. There is absolutely no reason in the

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[6] The City stopped taking the offset as of August 1, 1989, rather than when the Court denied rehearing on July 14, 1989, only because that latter date was the first occasion for the issuance of monthly pension checks after the Court denied rehearing in Barragan on July 14, 1989.

instant case to depart from Bell and the consolidated cases in this case. Accordingly, the Court is requested to issue in opinion in accordance with its holding in Bell.[7]

II.

THE CITY SHOULD NOT BE SUBJECTED TO THE 10% PENALTY FOR ITS FAILURE TO PAY A COMPENSATION CLAIM WHERE A RETROACTIVE "BARRAGAN' PAYMENT DOES NOT CONSTITUTE "COMPENSATION" OR "AN INSTALLMENT OF COMPENSATION" FOR PURPOSES OF SECTION 440.20, FLA. STAT.

The second set of major issues address the applicability of the punitive penalty which the workers' compensation law provides for employers who inexcusably delay either paying compensation claims or denying that payment is due.[8] It was not necessary for the Court in Bell and the consolidated cases to reach this issue because its determination that "Barragan has no effect" retroactively was dispositive. Likewise, it is not necessary for the Court to decide the penalty question because this case is governed by the Court's recent Bell opinion.

So as to avoid undue repetition, the City adopts and incorporates by reference as if fully set forth herein the arguments made in its briefs in Bell and the ten other cases as to why penalties under Florida's Workers' Compensation Act do not

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[7] So as to avoid undue repetition, the City adopts and incorporates by reference as if fully set forth herein the arguments made in its briefs in Bell and the ten other cases as to why Barragan should not be applied retroactively against the City.

[8] The penalty issue is before the Court on a certified question from the First District Court of Appeal. The retroactivity and other issues are before the Court under the doctrine announced in Bould v. Touchette, 349 So. 2d 1181 (Fla. 1977); Hillsborough Ass'n for Retarded Citizens v. City of Temple Terrace, 332 So. 2d 610 (Fla. 1976).

apply under these circumstances. If for some reason the Court grants rehearing in Bell, Petitioner respectfully requests that it be allowed to file a supplemental brief addressing the penalty question in toto.

III.

THE CITY SHOULD NOT BE SUBJECTED TO PAY PREJUDGMENT INTEREST FOR ITS FAILURE TO PAY A COMPENSATION CLAIM WHERE A RETROACTIVE "BARRAGAN" PAYMENT DOES NOT CONSTITUTE "COMPENSATION" FOR PURPOSES OF SECTION 440.20, FLA. STAT.

The third and final set of issues address the applicability of the interest provision of Section 440.20, Fla. Stat. under the circumstances attendant to retroactive pension offset awards as a result of Barragan. Although the City argued against the assessment of prejudgment interest under Section 440.20, Fla. Stat. in some, but not all, of the cases consolidated with Bell, the Court did not need to reach that issue in light of its dispositive holding that Barragan was not to be applied retroactively against the City. Similarly, it is not necessary for the Court to decide the interest question, notwithstanding the First District's certification of the question for the first time at this late juncture of the post-Barragan litigation, because this case is governed by the Court's recent Bell opinion.

So as to avoid undue repetition, the City adopts and incorporates by reference as if fully set forth herein the arguments made in its briefs in cases consolidated with Bell as to why interest under Florida's Workers' Compensation Act does not apply under these circumstances. If for some reason the Court grants rehearing in Bell, Petitioner respectfully requests

that it be allowed to file a supplemental brief addressing the interest question in toto.

CONCLUSION

Petitioner, CITY OF MIAMI, respectfully requests this Court reverse the decision of the First District Court of Appeal in accordance with the Court's recent issued in Bell. Penalties and prejudgment interest are also inappropriate.

CERTIFICATE OF SERVICE

IT IS HEREBY CERTIFIED that a true copy of the foregoing was furnished by mail to RICHARD A. SICKING, 2700 S.W. Third Avenue, Suite 1-E, Miami, Florida 33129, this 4th day of April, 1994.

Respectfully submitted,

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IN THE SUPREME COURT OF FLORIDA

CASE NO. 83,212

CITY OF MIAMI,

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JAMES P. GILBERT,

Respondent.

On Review of a Certified Question from the
First District Court of Appeal

APPENDIX TO INITIAL BRIEF OF PETITIONER

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* * *

Workers' compensation—Offset—Disability pension—Florida Supreme Court decision holding invalid a city ordinance which permitted city to reduce disability pension benefits in amount equal to workers' compensation benefits received applies prospectively only and has no effect on the amount of disability payments owed by city to pensioners except for those payments accruing after effective date of decision—City required to reimburse claimants for only offsets taken after effective date of Supreme Court decision—Penalty provision of section 440.20, Florida Statutes, is inapplicable to offsets taken prior to date of Supreme Court decision, but applicable to offsets taken after that date

CITY OF MIAMI, Petitioner, vs. RONALD BELL, Respondent. Supreme Court of Florida. Case No. 80,524. CITY OF MIAMI, Petitioner, vs. FRANK AROSTEGUI, Respondent. Case No. 80,560. CITY OF MIAMI, Petitioner, vs. RICHARD McLEAN, Respondent. Case No. 80,575. CITY OF MIAMI, Petitioner, vs. GEORGE A. MEYER, Respondent. Case No. 80,652. CITY OF MIAMI, Petitioner, vs. ROBERT THOMAS, Respondent. Case No. 80,683. CITY OF MIAMI, Petitioner, vs. ROBERT FAIR, Respondent. Case No. 80,728. CITY OF MIAMI, Petitioner, vs. JOHN HICKEY, Respondent. Case No. 80,981. CITY OF MIAMI, Petitioner, vs. KENNETH A. LEIBNITZER, Respondent. Case No. 80,998. CITY OF MIAMI, Petitioner, vs. EDWARD J. KING, Respondent. Case No. 80,999. CITY OF MIAMI, Petitioner, vs. ORLANDO PAREDES, Respondent. Case No. 81,340. CITY OF MIAMI, Petitioner, vs. ROBERT L. DAUGHERTY, Respondent. Case No. 81,554. March 3, 1994. The Cases Listed Below Are Consolidated. Case No. 80,524: Application for Review of the Decision of the District Court of Appeal - Certified Great Public Importance. 1st District - Case No. 91-1878. A. Quinn Jones, III, City Attorney and Kathryn Pecko, Assistant City Attorney, Miami; and Arthur J. England, Jr. and Charles M. Auslander of Greenberg, Traurig, Hoffman, Lipoff, Rosen & Quentel, P.A., Miami, for Petitioner. Richard A. Sicking, Miami, for Respondent. Case No. 80,560: Application for Review of the Decision of the District Court of Appeal - Certified Great Public Importance. 1st District - Case No. 91-675. A. Quinn Jones, III, City Attorney and Kathryn Pecko, Assistant City Attorney, Miami; and Arthur J. England, Jr. and Charles M. Auslander of Greenberg, Traurig, Hoffman, Lipoff, Rosen & Quentel, P.A., Miami, for Petitioner. Mark L. Zientz of Williams & Zientz, Miami, for Respondent. Case No. 80,575: Application for Review of the Decision of the District Court of Appeal - Certified Great Public Importance. 1st District - Case No. 91-2155. A. Quinn Jones, III, City Attorney and Kathryn Pecko, Assistant City Attorney, Miami; and Arthur J. England, Jr. and Charles M. Auslander of Greenberg, Traurig, Hoffman, Lipoff, Rosen & Quentel, P.A., Miami, for Petitioner. Paul J. Kneski of Kneski & Kneski, Miami, for Respondent. Case No. 80,652: Application for Review of the Decision of the District Court of Appeal - Certified Great Public Importance. 1st District - Case No. 91-1297. A. Quinn Jones, III, City Attorney and Kathryn Pecko, Assistant City Attorney, Miami; and Arthur J. England, Jr. and Charles M. Auslander of Greenberg, Traurig, Hoffman, Lipoff, Rosen & Quentel, P.A., Miami, for Petitioner. Richard A. Sicking, Miami, for Respondent. Case No. 80,683: Application for Review of the Decision of the District Court of Appeal - Certified Great Public Importance. 1st District - Case No. 91-1734. A. Quinn Jones, III, City Attorney and Kathryn Pecko, Assistant City Attorney, Miami; and Arthur J. England, Jr. and Charles M. Auslander of Greenberg, Traurig, Hoffman, Lipoff, Rosen & Quentel, P.A., Miami, for Petitioner. Mark L. Zientz of Williams & Zientz, Miami, for Respondent. Case No. 80,728: Application for Review of the Decision of the District Court of Appeal - Certified Great Public Importance. 1st District - Case No. 91-1334, A. Quinn Jones, III, City Attorney and Kathryn Pecko, Assistant City Attorney, Miami; and Arthur J. England, Jr. and Charles M. Auslander of Greenberg, Traurig, Hoffman, Lipoff, Rosen & Quentel, P.A., Miami, for Petitioner. Richard A. Sicking, Miami, for Respondent. Case No. 80,981: Application for Review of the Decision of the District Court of Appeal - Certified Great Public Importance. 1st District - Case No. 91-4025. A. Quinn Jones, III, City Attorney and Kathryn Pecko, Assistant City Attorney, Miami; and Arthur J. England, Jr. and Charles M. Auslander of Greenberg, Traurig, Hoffman, Lipoff, Rosen & Quentel, P.A., Miami, for Petitioner. Richard A. Sicking, Miami, for Respondent. Case No. 80,998: Application for Review of the Decision of the District Court of Appeal - Certified Great Public Importance. 1st District - Case No. 92-1595. A. Quinn Jones, III, City Attorney and Kathryn Pecko, Assistant City Attorney, Miami; and Arthur J. England, Jr. and Charles M. Auslander of Greenberg, Traurig, Hoffman, Lipoff, Rosen & Quentel, P.A., Miami, for Petitioner. Richard A. Sicking, Miami, for Respondent. Case No. 80,999: Application for Review of the Decision of the District Court of Appeal - Certified Great Public Importance. 1st District - Case No. 92-1594. A. Quinn Jones, III, City Attorney and Kathryn Pecko, Assistant City Attorney, Miami; and Arthur J. England, Jr. and Charles M. Auslander of Greenberg, Traurig, Hoffman, Kipoff, Rosen & Quentel, P.A., Miami, for Petitioner. Richard A. Sicking, Miami, for Respondent. Case No. 81,340: Application for Review of the Decision of the District Court of Appeal - Certified Great Public Importance. 1st District - Case No. 91-4150. A. Quinn Jones, III, City Attorney and Kathryn Pecko, Assistant City Attorney, Miami; and Arthur J. England, Jr. and Charles M. Auslander of Greenberg, Traurig, Hoffman, Lipoff, Rosen & Quentel, P.A., Miami, for Petitioner. Richard A. Sicking, Miami, for Respondent. Case No. 81-554: Application for Review of the Decision of the District Court of Appeal - Certified Great Public Importance. 1st District - Case No. 92-1593. A. Quinn Jones, III, City Attorney and Kathryn Pecko, Assistant City Attorney, Miami; and Arthur J. England, Jr. and Charles M. Auslander of Greenberg, Traurig, Hoffman, Lipoff, Rosen & Quentel, P.A., Miami, for Petitioner. Richard A. Sicking, Miami, for Respondent.

(PER CURIAM.) We have for review *City of Miami v. Bell*, 606 So. 2d 1183 (Fla. 1st DCA 1992), in which the district court certified the following question as one of great public importance:

> IS SECTION 440.20(7) APPLICABLE UNDER THE CIRCUMSTANCES OF THIS CASE, AND IF SO, CAN THE CITY OF MIAMI, BE LEGALLY EXCUSED FROM PAYING A PENALTY PURSUANT TO THAT SECTION ON THE AMOUNT OF PENSION OFFSET MONIES WITHHELD IN THE PAST BECAUSE THE CITY DID SO IN GOOD FAITH RELIANCE ON THE VALIDITY OF THE CITY ORDINANCE AUTHORIZING THE PENSION OFFSET IN VIEW OF THE APPELLATE DECISIONS APPROVING ITS VALIDITY?

We have jurisdiction. Art. V, § 3(b)(4), Fla. Const.

A city ordinance authorized the City of Miami (City) to reduce disability pension benefits for its retired employees in an amount equal to the workers' compensation benefits they were entitled to receive for the disabling event. This Court held the ordinance invalid based upon the legislature's 1973 repeal of section 440.09 (4), Florida Statutes (1971).[1] *Barragan v. City of Miami*, 545 So. 2d 252 (Fla. 1989). The City continued to deduct the offset until August 1, 1989.

Respondent, Ronald Bell, a Miami firefighter, was injured in a compensable accident on January 23, 1985. On September 24, 1987, Bell began drawing permanent total disability (PTD) workers' compensation benefits of $307 per week. On the same date, Bell's disability retirement pension benefits became effective. From September 24, 1987, until August 1, 1989, the City offset Bell's PTD benefits against his monthly disability retirement pension on authority of the invalid ordinance. After August 1, 1989, the City paid full PTD and pension benefits to Bell.

On July 19, 1989, Bell submitted a claim for reimbursement of his pension offsets, with interest, penalties, costs and attorneys' fees. The City filed a notice to controvert with the Division of Workers' Compensation on August 14, 1989. The Judge of Compensation Claims rejected the City's defenses and awarded Bell benefits of $307 per week for the offset portion, with interest, costs, attorneys' fees and a ten-percent penalty pursuant to section 440.20, Florida Statutes (1985).[2] The First District Court of Appeal affirmed the order and certified the above question.

The Bell case has been consolidated with ten others.[3] In each, the respondent is a City employee injured in a compensable accident between 1973 and 1989. All were awarded reimburse-

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ment for their pension offsets with interest, a ten-percent penalty, costs and attorneys' fees, and the awards were affirmed on appeal.

As noted above, this Court held in *Barragan* that the 1973 repeal of section 440.09(4), Florida Statutes (1971), had the effect of invalidating the City ordinance. We rejected the ordinance as contravening section 440.21, Florida Statutes (1987), which prohibits the City from deducting from the employee's income a contribution to pay workers' compensation benefits. We must now decide whether *Barragan* is to be applied prospectively only.

We conclude that our decision in *Barragan* has no effect on the amount of disability payments owed by the City to pensioners except for those payments accruing after the effective date of that decision. From 1973 until the date *Barragan* was decided, the City of Miami followed its ordinance in reducing disability payments by an amount equal to workers' compensation benefits. The Third District Court of Appeal upheld this practice. *Hoffkins v. City of Miami*, 339 So. 2d 1145 (Fla. 3d DCA 1976). The City's budgeting for salary and benefits as well as its allocation of tax resources was made in reliance on the ordinance and existing caselaw. Holding the City liable for past offsets would require a reallocation of municipal services and subject today's taxpayers to yesterday's fiscal obligations.

The City's contracts with its employees recognized the City's right to an offset. To now hold the City liable for past offsets would effectively modify completed contracts without affording the City an opportunity to renegotiate the other terms of those contracts, such as salaries and benefits. When contractual rights are adversely affected in such a manner, we are reluctant to apply a decision retroactively. *Florida Forest & Park Service v. Strickland*, 154 Fla. 472, 18 So. 2d 251 (1944). We note that our rulings in *Martinez v. Scanlan*, 582 So. 2d 1167 (Fla. 1991), and *National Distributing Co. v. Office of Comptroller*, 523 So. 2d 156 (Fla. 1988), were prospective only.

To the extent the offset was taken prior to *Barragan*, City employees have received what their contracts called for when their rights vested. Present and future benefits required by *Barragan* can be adjusted without serious financial consequence for City taxpayers; but to require back benefits for prior years would be fiscally unjust to the taxpayers of the City of Miami.

Accordingly, the City must reimburse claimants for only those offsets taken after the effective date of *Barragan*, i.e., July 14, 1989. The penalty provision of section 440.20, Florida Statutes (1985), is inapplicable to offsets taken prior to that date, but applicable to those taken after.

To the extent it is inconsistent with our present opinion, we quash *Bell* and remand for proceedings consistent with this opinion.[4]

It is so ordered. (OVERTON, McDONALD, SHAW, GRIMES, KOGAN and HARDING, JJ., concur. BARKETT, C.J., recused.)

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[1]Section 440.09(4) provided that any workers' compensation benefits payable to injured public employees should be reduced by the amount of pension benefits that were also payable. Private employers were prohibited from taking offsets for workers' compensation benefits by section 440.21, which states:

> (1) No agreement by an employee to pay any portion of premium paid by his employer to a carrier or to contribute to a benefit fund or department maintained by such employer for the purpose of providing compensation or medical services and supplies as required by this chapter shall be valid, and any employer who makes a deduction for such purpose from the pay of any employee entitled to the benefits of this chapter shall be guilty of a misdemeanor of the second degree, punishable as provided in § 775.083.
>
> (2) No agreement by an employee to waive his right to compensation under this chapter shall be valid.

[2]Section 440.20, Florida Statutes (1985), requires that workers' compensation payments made by employers are to be made when due without the claimant having to file a formal claim. Subsection 440.20(7) provides in part:

> If any installment of compensation for death or dependency benefits, disability, permanent impairment, or wage loss payable without an award is not paid within 14 days after it becomes due, as provided in subsection (2), subsection (3), or subsection (4), there shall be added to such unpaid installment a punitive penalty of an amount equal to the greater of 10 percent of the unpaid installment or $5, which shall be pai at the same time as, but in addition to, such installment of compensatior unless notice is filed under subsection six (6) or unless such nonpaymer results from conditions over which the employer or carrier had no cor trol. .

Subsection 440.20(6) provides in part:

> If the employer or carrier initially accepts the claim but subsequentl controverts the claim, it shall file with the division a notice to contro vert, within 10 days after the date of initial cessation of benefits . . . .

[3]*City of Miami v. Arostegui*, No. 80,560 (police officer injured November 2 1976); *City of Miami v. McLean*, No. 80,575 (sanitation worker injured Augus 26, 1976); *City of Miami v. Meyer*, No, 80,652 (firefighter injured March 13 1976); *City of Miami v. Thomas*, No. 80,683 (police sergeant injured Novembe 12, 1976); *City of Miami v. Fair*, No. 80,728 (firefighter injured June 18 1975); *City of Miami v. Hickey*, No. 80,981 (police officer injured March 1 1977); *City of Miami v. Leibnitzer*, No. 80,998 (firefighter injured July 1 1979); *City of Miami v. King*, No. 80,999 (firefighter injured January 1 1975); *City of Miami v. Paredes*, No. 81,340 (police officer injured Novemb 23, 1979); and *City of Miami v. Daugherty*, No. 81,554 (firefighter injure March 9, 1982).

[4]We quash the district court decisions in the consolidated cases, *see sup* note 3, and remand for proceedings consistent with this opinion.

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