Filing # 20145749 Electronically Filed 11/03/2014 05:39:00 PM

RECEIVED, 11/3/2014 17:43:39, John A. Tomasino, Clerk, Supreme Court

IN THE SUPREME COURT OF FLORIDA

Case No.: SC13-1882

WALTER E. HEADLEY, JR., MIAMI LODGE #20,
FRATERNAL ORDER OF POLICE, INC.,

Petitioner,

vs.

CITY OF MIAMI, FLORIDA,

Respondent.

On Appeal from the District Court of Appeal
First District, State of Florida
Case No.: 1D12-2116

BRIEF OF AMICUS CURIAE BOARD OF TRUSTEES OF THE CITY OF HOLLYWOOD, ETC., ET AL., IN SUPPORT OF PETITIONER, WALTER E. HEADLEY, JR.

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STATEMENT OF INTEREST

The Amici filing this Brief are the Board of Trustees of the City of Hollywood Firefighters' Pension System and the Board of Trustees of the City of Hollywood Police Officers' Retirement System (the "Trustee Amici"); and two members of those pension systems, firefighter William Huddleston and police officer Van Szeto (the "Individual Amici"). The Trustee Amici were created as trustees under §§ 175.071 and 185.05, Fla. Stat., and City of Hollywood ordinances to manage the City of Hollywood firefighter and police officer pension funds. The Trustee Amici seek clarity as to the impact of changes that the City of Hollywood has imposed using the financial urgency determination process established in § 447.4095, Fla. Stat., in order to ensure that they properly exercise their fiduciary responsibility to ensure that beneficiaries will receive all benefits to which they are legally entitled. The Individual Amici seek to ensure that such changes do not deprive them of the full range of benefits to which they are legally entitled from their pension systems.

This lack of clarity has led Amici to seek judicial relief challenging the City of Hollywood's use of the financial urgency process to make unilateral revisions to collective bargaining agreements that would, among other things, modify the two pension systems. A portion of that case is pending before this Court in *Board of Trustees of the City Of Hollywood, etc., et al., Petitioners, vs. City of Hollywood,*

etc., Respondent, Case No.: SC14-1538, seeking conflict jurisdiction to address the issue of whether the Public Employee Relations Commission ("PERC") has exclusive original jurisdiction to determine the validity of any use of the financial urgency determination process.

Amici had challenged not the validity of the City's application of the financial urgency determination process itself, but the City's constitutional authority to use the process to enact ordinances that would allow for continuation of the changes thereby enabled beyond the time period that the City of Hollywood determined by resolutions that a financial urgency existed. Amici thus sought as relief a judicial declaration that even if the modifications were lawfully enacted by the City of Hollywood, they could not last any longer than the ending date of the resolutions. The rest of Amici's case remains pending in circuit court, where the financial urgency process remains at issue, in *The Board of Trustees of the City of Hollywood Firefighters' Pension System and William Huddleston v. City of Hollywood, Florida*, Consolidated Case No. 12-1001000 Div. 05.

Amici's interest is heightened by the fact that on the merits the Fourth District has set aside a PERC order upholding the wage and pension changes enabled by the City of Hollywood's application of the same financial urgency determination process. *Hollywood Fire Fighters, Local 1375, IAFF, Inc. v. City of Hollywood*, 133 So.3d 1042 (Fla. 4th DCA 2014). That case is currently pending

review before this Court in *City of Hollywood, Petitioner, vs. Hollywood Fire Fighters, etc. Respondent*, Case No.: SC14-244. This Court has issued an order staying consideration of the case pending disposition of the instant case.

SUMMARY OF ARGUMENT

This Court faces a conflict between the interpretation of *Chiles v. United Faculty of Florida*, 615 So.2d 671 (Fla. 1993) as stated by the First District in the instant case, *Headley v. City of Miami*, 118 So.3d 885 (Fla. 1st DCA 2013), and its interpretation by the Fourth District in *Hollywood Fire Fighters.* Both cases recognize that under Article I, Sections 6 and 10, of the Florida Constitution, municipalities are limited in their ability to use the financial urgency process in § 447.4095, Fla. Stat., to enact unilateral modifications to wages and pension benefits, and that the limits should be examined based upon the "no reasonable alternative" standard established in *Chiles*. 615 So.2d at 673. The cases disagree over how that standard should be applied. The Petitioner in the instant case in fact asserts that the First District's interpretation of the "no reasonable alternative" standard, by allowing for political considerations to be allowed, renders the standard essentially meaningless, and as a result that the First District is in effect overruling *Chiles.* (Petitioner's Initial Brief, pp. 22-23)

While concurring with the interpretation presented by Petitioner, Amici submit that in order to interpret § 447.4095, Fla. Stat., in a constitutional manner

under either application of the *Chiles* standard, any unilateral changes enabled by the financial urgency determination process should last only as long as the period established by the resolution making that determination, after which the status quo prior to that determination should be reinstated. Under *Chiles* the "no reasonable alternative" standard is necessarily time limited. To be consistent with *Chiles*, that limitation must also be considered a necessary element of § 447.4095, Fla. Stat., such that any constitutionally-permissible application of the statute would limit any modification enabled by the financial urgency process to the length of time the public employer determines by resolution that such a financial urgency exists. The City has instead used the statute to create a vehicle by which unilateral changes can be made in a permanent manner, thereby effectively vitiating those very constitutional rights that the statute was purportedly attempting to preserve.

ARGUMENT

***Chiles v. United Faculty of Florida*, 615 So.2d 671 (Fla. 1993), Prevents a Municipality from Using the Financial Urgency Process in § 447.4095, Fla. Stat., to Make Unilateral Changes to Collective Bargaining Agreements Beyond the Period of the Financial Urgency**

In *Chiles* this Court held that before the Legislature could reduce appropriations for salaries received by state employees to an amount below that guaranteed under collective bargaining agreements, the Legislature had to demonstrate "no other reasonable alternative means of preserving its contract with

public workers, either in whole or in part." *Chiles*, 615 So.2d at 673. That case involved the Legislature's decision to reduce its annual appropriation for public worker salaries because of a perceived revenue shortfall. At issue here is the City of Miami's use of the financial urgency process to make reductions in both wages and pension benefits through the unilateral contract modification process authorized by § 447.4095, Fla. Stat., enacted subsequent to *Chiles.* Those reductions went beyond the changes examined in *Chiles*. Instead of just one year's salary reduction, the modification had a permanent effect, because it would also impact both future salary amounts and pension payments. Amici Trustees have fiduciary responsibility over proper management of the latter.

Petitioner here argues that the First District misapplied *Chiles* in *Headley* by adopting an ordinance based upon political consideration to effectuate the changes imposed through the financial urgency process, which is inconsistent with the reasonable alternatives analysis mandated in *Chiles.* (Initial Brief, pp. 22-23) Amici submit that even if such political considerations were allowable, the strict scrutiny requirements recognized in *Chiles* would place an even stricter review requirement upon a pension change implemented by an ordinance-imposed contract modification, because the long-term and permanent impact of such a modification would be much more extensive than the one-year salary reduction that itself did not pass constitutional muster in *Chiles.*

The constitutional problem arises from the City of Miami's application of § 447.4095, Fla. Stat., far beyond the limits examined in *Chiles.* A history of the statute can be found in J. Rosinksi, *Labor Relations in Florida's Public Sector: Visiting the State's Past and Present to Find a Future Solution to the Fight over the Public Purse under Florida's Financial Urgency Statute*, 35 Nova L. Rev. 227 (2010). As the article explains, the Legislature created § 447.4095, Fla. Stat., to establish the financial urgency determination process to be used in conjunction with impasse resolution procedures of § 447.403, Fla. Stat., as a vehicle to allow for constitutionally permissible unilateral changes in collective bargaining agreements at times when public employers experience revenue shortfalls.

Under § 447.403(4)(e), Fla. Stat., if an impasse-based modification to a collective bargaining agreement "is not ratified by all parties, . . . the legislative body's action taken pursuant to the provisions of paragraph (d) [i.e., unilateral impasse resolution] shall take effect as of the date of such legislative body's action <u>for the remainder of the first fiscal year</u> which was the subject of negotiations." (Emphasis supplied.) Reading the statutes together in light of the constitutional guaranties to collective bargaining explained in *Chiles*, any changes to collective bargaining agreement to be enacted through the financial urgency process procedures can only be constitutionally permissible if the public employer's financial urgency resolution is limited to the period of within which it can justify

both that a legitimate revenue shortfall exists and that no reasonable alternative to meeting its contractual obligations exists. After that time, the status quo prior to the financial urgency determination should be reinstated.

Section 447.403, Fla. Stat., makes no distinction as to what changes can be made to collective bargaining agreements as a result of the procedures established in the statute. By necessary inference, the changes must be ones that have a financial impact, including salaries and pension benefits. In practical effect, however, even if salary changes are time limited, the changes to pension benefits would likely be effective both during the financial urgency process and indefinitely thereafter. The occurrence of the latter scenario has happened here, as shown by the fact that the pension changes imposed by the City of Miami included changes to the pension benefit formula that would take effect in future fiscal years. (Petitioners' Initial Brief, p. 7)

Because of their fiduciary obligations, the Amici Trustees are particularly concerned about whether financial urgency-enabled to pension systems of indefinite length exceed the constitutional constraints recognized in *Chiles*, whatever their effect on wages. Amici have thus felt it necessary test the legality of such indefinite changes in their own case before this Court because of an apparent conflict in those fiduciary obligations between requirements implemented by local ordinances and the mandates of the Florida Constitution.

The problem Amici have identified in their own case has parallels here as illustrated here by the fact that the record in this case shows that the financial concerns the City was using to justify its contract modifications were those occurring only in Fiscal Year 2010-2011. (Initial Brief, pp. 9-10) Nonetheless, by changing the contractual status quo and making that change permanent by ordinance, the public employees here lost rights that would otherwise exist to maintain the status quo of their existing collective bargaining agreement after the expiration of the existing one. *See, Util. Workers Union of Am. v. City of Lakeland,* 8 So. 3d 436, 437-438 (Fla. 2d DCA 2009).

This Court recognized in *Scott v. Williams*, 107 So.3d 379 (Fla. 2013), that the Florida Legislature can make prospective changes to the state retirement system without the changes constituting a facial violation of the Florida Constitution. In that case, however, there was "no proper claim before the Court . . . that the amendments violate any specific collective bargaining agreement . . . ." *Id.* at 389. As applied here, Amici submit that the only way the financial urgency statute can be applied in a constitutional manner—i.e., to make unilateral modifications to a collective bargaining agreement--would be to limit any legislative changes, assuming they were properly enacted, to the length of time the financial urgency determination remains in effect. Otherwise, as applied here, and assuming the City properly utilized § 447.4095, Fla. Stat., to make unilateral

modifications to the collective bargaining agreement, that enactment became unconstitutional once the financial urgency found by the City ceased to exist.

While the police officers here could still seek a future collective bargaining agreement with improvements to wages and pension benefits, the status quo would effectively become the City ordinance that replaced the existing agreement, thus causing them to lose their vested rights in the existing system. The City has thereby not only modified an existing collective bargaining agreement to suit its current financial preferences, but also provided a very great hurdle for the officers to overcome to negotiate a new agreement—particularly since the City could otherwise maintain a permanent status quo to its liking. Particularly as to pension benefits, adjustments to make up for reductions in future benefits would be more complex to reinstate. Whereas wages can be readjusted to reflect the financial conditions in a subsequent fiscal year, with no need to offer any compensation for reduced wages during the financial urgency period, pension benefits would have to be readjusted to make up for the future benefits lost during that period as well.

The First District here, after not accepting the *Chiles* "restrictive standard" that '"funds are available from no other reasonable source,"' concluded that "the local government must only show that other potential cost-saving measures and alternative funding sources are unreasonable or inadequate to address the dire financial condition facing the local government." 118 So.3d at 893. Even under

that lower threshold, the First District did not examine the impact of changes on collective bargaining agreements that may go beyond any "dire financial condition" that a local government has determined to exist for a limited period of time. Nonetheless, the First District essentially allowed a permanent change as if those dire financial conditions would continue indefinitely.

The First District distinguished the financial urgency process as being "less dire" than "when a local government is facing a financial emergency or bankruptcy." *Id.* at 891 (footnotes omitted). The procedures for financial emergency are established in § 218.503, Fla. Stat., and for bankruptcy in § 218.01, Fla. Stat. As a result, the First District concluded that the constitutional constraints on financial urgency procedures should be less rigorous than those procedures. That conclusion begs the question, however, of what the financial urgency process should be examining in the first place. If the financial problems are "less dire," then the financial urgency process should not be interpreted to enable permanent changes to wages and pension benefits. By using the financial urgency process rather than more dire procedures to accomplish similar results, public employers thereby avoid not only doing a thorough examination of reasonable alternatives, but also the hard political questions that may arise if the public employer has to acknowledge that its financial problems are long term, and not just temporary. In other words, the public employers thereby seek to have their cake and eat it too.

As Petitioner explains, the City of Miami could have raise taxes to provide the necessary revenues for the shortfalls, and noted testimony that raising taxes was rejected for "political" reasons. (Initial Brief, p. 26). The City could have laid off or furloughed staff. (*Id.* at 27-28). What this alternatives analysis did not include was the extent to which the City could meet wage and pension obligations in future years. Such an analysis was not at issue in *Chiles* given that the issue was an annual appropriation that was insufficient to meet financial obligations for the upcoming fiscal year.

It is hard to believe that whatever the outcome in *Chiles*, the Court would have expanded the limited exception to the constitutional constraints on unilateral changes to collective bargaining rights as allowed under § 447.4095, Fla. Stat., such that those unilateral changes could be made permanent. *See, e.g., Scott,* 107 So.3rd at 391 (Pariente, J. concurring) ("Nor is [this case] about the necessity of the Legislature's action or whether the Legislature had reasonable alternatives to accomplish its goal.[FN] Such considerations would become relevant to our analysis only if the Legislature's decision constituted an impairment of contract.") As a result, this Court should conclude that any application of the financial urgency process under §447.4095, Fla. Stat., is unconstitutional to the extent that the changes to collective bargaining agreements enabled thereby do not expire once the time fame established in the resolution determining the financial urgency

has ended and then revert to the status quo that existed prior to the imposition of the determination.

CONCLUSION

This Court should reverse the decision of the First District based upon its failure to follow the proper criteria in *Chiles* in upholding the City of Miami's use of the financial urgency process under §447.4095, Fla. Stat., to make unilateral changes to the collective bargaining agreement at issue. At a minimum, the Court should hold as unconstitutional any implementation of the ordinance changes enabled thereby beyond the period of time established pursuant to the financial urgency determination process that does not allow for reinstatement of the collective bargaining agreement to the status quo as it existed prior to the imposition of the changes enabled by the determination.

CERTIFICATE OF TYPEFACE COMPLIANCE

Counsel for Petitioners has certified that this *Jurisdictional Brief* is typed in 14 point (proportionately spaced) Times New Roman, in compliance with Rule 9.210 of the Florida Rules of Appellate Procedure.

By: /s/Daniel H. Thompson
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CERTIFICATE OF SERVICE

WE HEREBY CERTIFY that on November 3, 2014, a true and correct copy of the foregoing was electronically filed with the Florida Courts E-Filing Portal with noticed furnished to all registered users, and as indicated on the attached Service List:

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