

SUPREME COURT OF RHODE ISLAND

Retirement Board of the Employees' Retirement System of the City
of Providence v. Frank E. Corrente and Mayor of the City of
Providence et al.

Retirement Board of the Employees' Retirement System of the City of Providence v. Frank E. Corrente and Mayor of the City of Providence et al. · No. 2015-246-Appeal; 2015-244-Appeal; 2015-243-Appeal · Decided December 15, 2017

SUMMARY

This per curiam opinion of the Rhode Island Supreme Court addresses consolidated appeals arising from the reduction of Frank E. Corrente’s municipal pension benefits following federal felony convictions under Providence’s Honorable Service Ordinance. The court considers intervention by the mayor and city, the appropriate standard of review, the board’s authority to reduce pension benefits, and Corrente’s request for a tax credit for benefits he was required to repay. The opinion affirms the Superior Court’s judgment.

CASE DETAILS

COURT	Supreme Court of Rhode Island
WRITING FOR THE COURT	Chief Justice Paul A. Suttell; Chief Justice Suttell; Justice Goldberg; Justice Flaherty; Justice Robinson; Justice Indeglia
JURISDICTION	Rhode Island
DECIDED	December 15, 2017
DOCKET	2015-246-Appeal; 2015-244-Appeal; 2015-243-Appeal
DISPOSITION	affirmed
PROCEDURAL POSTURE	Consolidated appeals and a cross-appeal from Providence County Superior Court judgments confirming the Retirement Board's reduction of Corrente's pension benefits, denying Corrente's request for a tax credit, and allowing the mayor and city to intervene as of right.
STANDARD OF REVIEW	The Supreme Court reviews the Superior Court's judgment in administrative proceedings for questions of law, reviews legal questions de novo, and will not substitute its judgment for the agency's on credibility or factual weight. Under the Administrative Procedures Act, an agency decision may be reversed or modified only if

	substantial rights were prejudiced by specified legal or procedural error, clear error, or arbitrary, capricious, or abusive discretion. A trial court's grant of intervention as of right is reviewed for abuse of discretion.
PRECEDENTIAL VALUE	Published Rhode Island Supreme Court opinion; precedential.
PARTIES	Frank E. Corrente, Mayor of the City of Providence, City of Providence v. Retirement Board of the Employees' Retirement System of the City of Providence

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QUESTIONS PRESENTED

1. Whether the mayor and the City of Providence satisfied the requirements for intervention as of right under Rule 24(a)(2) of the Superior Court Rules of Civil Procedure.
2. Whether a Superior Court action initiated under the Honorable Service Ordinance is reviewed de novo or under the deferential standard applicable to administrative appeals under the Administrative Procedures Act.
3. Whether the Retirement Board's decision to reduce rather than revoke Corrente's pension benefits was arbitrary, capricious, clearly erroneous, affected by legal error, or an abuse of discretion.
4. Whether the Retirement Board properly denied Corrente's request for a tax credit on pension benefits he was required to repay.

HOLDINGS

1. The Superior Court did not err or abuse its discretion in allowing the mayor and the City of Providence to intervene as of right because the intervenors timely claimed a significant municipal interest that could be impaired and their interests were not adequately represented by the existing parties.
2. A Superior Court action initiated by the Retirement Board under the Honorable Service Ordinance is appropriately treated as an administrative appeal and reviewed under the Administrative Procedures Act standard rather than de novo.
3. The Retirement Board's decision to reduce Corrente's pension benefits rather than revoke them entirely was not arbitrary, capricious, clearly erroneous, affected by legal error, or an abuse of discretion.
4. The Retirement Board properly denied Corrente's request for a tax credit because its decision was supported by legally competent evidence and the record did not establish that the Board had authority to grant the credit.

KEY QUOTATIONS

“We conclude that the HSO’s phrase “initiate a civil action” is ambiguous because it lends itself to more than one reasonable meaning; it can encompass either a de novo proceeding or an administrative appeal, like a proceeding conducted pursuant to the APA.” (at 18)

“The trial justice correctly construed the language in the HSO mandating that the board “initiate a civil action in the [S]uperior [C]ourt” as akin to an administrative appeal and appropriately applied the standard of review set forth in the APA.” (at 21)

“The HSO provides for either reduction or revocation of pension benefits, and the report clearly explains the rationale behind the decision to reduce, rather than revoke, Corrente’s pension.” (at 24)

FACTUAL BACKGROUND

Frank E. Corrente served the City of Providence during two separate periods, first as city controller and later as director of administration. He was convicted in federal court of six felony counts arising from conduct during his second period of city employment. Pursuant to the pre-2011 Honorable Service Ordinance, the Retirement Board revoked benefits attributable to the second period, reinstated a reduced pension based on the first period, and ordered repayment of benefits previously received. Corrente sought a tax credit for taxes allegedly paid on the revoked benefits, while the mayor and city argued that the pension should be fully revoked.

PROCEDURAL HISTORY

The Retirement Board initiated a Superior Court action to confirm its decision under Providence's Honorable Service Ordinance. The Superior Court allowed the mayor and city to intervene, confirmed the Board's decision to reduce rather than revoke Corrente's pension benefits, and remanded the tax-credit issue to the Board. After the Board denied a tax credit, the Superior Court declined to overrule that decision. The Rhode Island Supreme Court had previously vacated an earlier Superior Court judgment for lack of subject-matter jurisdiction in Corrente I and remanded; the Superior Court then re-entered its prior rulings, producing these consolidated appeals.

DISPOSITION

affirmed

REMAND INSTRUCTIONS

The papers were remanded to the Providence County Superior Court.

CASES CITED

- Retirement Board of Employees’ Retirement System of Providence v. Corrente, 111 A.3d 301, 302 n.1, 303-05, 305, 309-10 (R.I. 2015)
- Hines Road, LLC v. Hall, 113 A.3d 924, 927-28 (R.I. 2015)
- Town of Coventry v. Baird Properties, LLC, 13 A.3d 614, 619 (R.I. 2011)
- Maine v. Director, United States Fish & Wildlife Service, 262 F.3d 13, 19 (1st Cir. 2001)

- Public Service Co. of New Hampshire v. Patch, 136 F.3d 197, 204 (1st Cir. 1998)
- Massachusetts Food Association v. Massachusetts Alcoholic Beverages Control Commission, 197 F.3d 560, 567 (1st Cir. 1999)
- Cotter v. Massachusetts Association of Minority Law Enforcement Officers, 219 F.3d 31, 35 (1st Cir. 2000)
- Roach v. State, 157 A.3d 1042, 1057 (R.I. 2017)
- State v. Bido, 941 A.2d 822, 828-29 (R.I. 2008)
- Morse v. Employees Retirement System of Providence, 139 A.3d 385, 391-92 (R.I. 2016)
- Murphy v. Zoning Board of Review of South Kingstown, 959 A.2d 535, 541 (R.I. 2008)
- Prew v. Employee Retirement System of Providence, 139 A.3d 556, 561 (R.I. 2016)
- Trant v. Lucent Technologies, 896 A.2d 710, 712 (R.I. 2006)
- Iselin v. Retirement Board of Employees' Retirement System of Rhode Island, 943 A.2d 1045, 1048 (R.I. 2008)
- Rossi v. Employees' Retirement System of Rhode Island, 895 A.2d 106, 110 (R.I. 2006)
- McAninch v. State of Rhode Island Department of Labor and Training, 64 A.3d 84, 86 (R.I. 2013)
- Heritage Healthcare Services, Inc. v. Marques, 14 A.3d 932, 936 (R.I. 2011)
- Beagan v. Rhode Island Department of Labor and Training, 162 A.3d 619, 626 (R.I. 2017)
- Tierney v. Department of Human Services, 793 A.2d 210, 213 (R.I. 2002)
- Rhode Island Temps, Inc. v. Department of Labor and Training, Board of Review, 749 A.2d 1121, 1124-25 (R.I. 2000)
- Town of Burrillville v. Pascoag Apartment Associates, LLC, 950 A.2d 435, 451 (R.I. 2008)
- Atchison, Topeka & Santa Fe Railway Co. v. Wichita Board of Trade, 412 U.S. 800, 808 (1973)
- Environmental Scientific Corp. v. Durfee, 621 A.2d 200, 206 (R.I. 1993)
- Johnston Ambulatory Surgical Associates, Ltd. v. Nolan, 755 A.2d 799, 807 (R.I. 2000)

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