

SUPREME COURT OF FLORIDA

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CASE NO. SC08-617

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**GLEN IKALINA,**

Petitioner,

vs.

**THE CITY OF PEMBROKE PINES,**

Respondent.

Express & Direct Conflict Jurisdiction  
Fourth District Court of Appeal Case Nos. 4D06-2411

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**PETITIONER'S BRIEF ON JURISDICTION**

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I.

**STATEMENT OF THE CASE AND FACTS**

Glen Ikalina petitions from a decision of the Fourth District Court of Appeal that confirmed the trial court's confirmation of an arbitration award in favor of the City of Pembroke Pines. Mr. Ikalina contended that the City's Pension Board had exclusive jurisdiction over the dispute that preempted the jurisdiction of the arbitrator. The Fourth DCA disagreed. The relevant facts, as set forth in the Fourth District's opinion, are as follows:

Glen Ikalina, a policeman with the City of Pembroke Pines, was suspended by the City and sought arbitration through his union's grievance procedures. The parties agreed to a settlement on February 11, 2004, in which Ikalina agreed to retire. Specifically, the agreement provided:

Grievant/Employee will retire in good standing on April 16, 2004 subject to all other provisions of this agreement. Upon his retirement Grievant/Employee will receive all standard/normal retirement benefits that any other police department employee receives and will be entitled to use his existing leave accruals and the City will contribute the difference so that Grievant/Employee will have 1,000 hours accrued leave to cash in for pension purposes.

3.0 Beginning on February 12, 2004, Grievant/Employee shall be placed on paid administrative leave with no reporting requirements by the City. Grievant/Employee will continue to enjoy all benefits provided to all other Police Benevolent Association members on paid status, -said leave to continue until his retirement date of April 16, 2004. However, if the CBA referenced in paragraph 6.0 and the

new pension ordinance also mentioned in paragraph 6.0 are approved subsequent to April 16, 2004, Grievant/Employee will continue to receive the same until both the CBA and new pension ordinance are approved. Grievant/Employee shall turn in City issued equipment at the Police Department by February 12, 2004 at noon.

The agreement also provided that the arbitrator retained jurisdiction for purposes of carrying out the terms of the agreement.

On April 15, 2004, the day before Ikalina agreed to retire, he appeared before the Pension Board to apply for and request participation in the DROP Program. This program is available to active City employees who have attained "normal retirement status" under section 34.43 of the City's code of ordinances. City of Pembroke Pines, Fla., Code of Ordinances §34.43 (2004). Pursuant to section 34.52(C)(3), DROP participants may continue working for up to five years. During this period, the participants' pension payments are deposited into an interest bearing DROP account. §34.52(C)(5). An individual's involvement in the DROP program terminates in four ways: when the participant either "[e]lects in writing . . . to cease participation," "realizes the maximum participation period," "[t]erminates his employment as a police officer or firefighter," or "[d]ies." § 34.52(C)(8)(a)-(d).

It is not clear from the record whether the Pension Board determined that Ikalina qualified for the DROP program. Nevertheless, because Ikalina retired pursuant to the terms of the settlement agreement on April 16th, the City claimed that he was no longer in its employ and his ability to participate terminated pursuant to § 34.52(C)(8).

Ikalina filed a complaint against the City alleging that it breached the settlement agreement by failing to provide him with normal retirement benefits. He also requested a declaratory judgment as to his rights. The City moved to dismiss the complaint and to refer it to the arbitrator who still retained jurisdiction over the settlement agreement. The court abated the action while the arbitrator considered the issue.

After receiving submissions from the parties, the arbitrator determined

that the City had complied with the agreement. Specifically, the arbitrator found:

The parties complied with paragraph 2 of the Settlement Agreement requiring Ikalina to retire under the Normal Retirement provisions of the Pension Fund effective April 16, 2004, and thus end his employment as a City police officer effective April 17, 2004.

As intended by the parties and clearly stated in paragraph 2 of the Settlement Agreement, Ikalina retired and, thus, left the employ of the City. Moreover, under the Pension Plan's specific language pertaining to the DROP program, DROP terminates or ends when the police officer's employment ends. Thus, by Ikalina signing the Settlement Agreement, his last day of employment as a City police officer was April 16, 2004. It follows, accordingly, that after such date he was no longer eligible for DROP.

After the arbitrator ruled, the City renewed its motion to dismiss, which the trial court granted based upon the findings of the arbitrator. The court found that the arbitrator did not exceed his authority in ruling on the issue of compliance with the agreement. Ikalina appeals this ruling.

*Ikalina v. City of Pembroke Pines*, 972 So. 2d 962, 963-64 (Fla. 4<sup>th</sup> DCA 2007).

In its opinion, the Fourth DCA refers to municipal ordinances regarding the DROP program and the City's Pension Board. The provisions of the Police & Fire Pension Plan specific to the DROP are set forth in § 34.52(C) of the Code of Ordinances of the City of Pembroke Pines:

A deferred retirement option plan ("DROP") is hereby created at no cost and with no liability to the city. An employee who is a member of the pension system and would be eligible to receive a service retirement pension under the city's retirement system and has attained "Normal

Retirement Status,” as specified in § 34.43 of this code, shall be eligible to participate in the Deferred Retirement Option Plan (“DROP”)...

The termination provision of the DROP, as set forth in §34.52(C)(8), provides for DROP participation to end when the participant either: (a) elects in writing to cease participation in DROP; (b) realizes the maximum participation period [in Ikalina’s case, five years]; (c) “terminates his employment as a police officer...”; or (d) dies.

Pursuant to the City’s ordinances, a Board of Trustees was established and vested with the responsibility for the general administration and operation of the Pension Plan. The duties, responsibilities and powers of the Board include receiving and processing all applications for participation and benefits under the Pension Plan, “constru[ing] the provisions of the system and determin[ing] all questions arising thereunder,” and “determin[ing] all questions relating to eligibility and participation.” § 34.56(M)(1),(2).

In its opinion, the Fourth DCA concludes that the trial court properly referred the case to arbitration to determine whether the City had properly carried out the terms of the settlement agreement by determining that Mr. Ikalina was ineligible for the DROP because he had been “terminated” from employment. In so holding the Fourth DCA made a distinction between “reaching normal retirement status” (and being eligible for the DROP), versus “retiring” and thereby “terminating” employment and losing eligibility for the DROP:

Ikalina makes a mistake when he claims that under the settlement agreement he was entitled to all benefits, including DROP, when he reached normal retirement *status* on April 16, 2004. The agreement did not provide this. It quite clearly provided that Ikalina would *retire*, and he would receive all of the benefits that retired officers would receive. There is a difference. When one retires, one stops working. Attaining retirement *status* does not necessarily require one to stop working; it merely means that the employee has attained the necessary requirements to retire (i.e., met the retirement requirements of the pension plan). The settlement agreement unambiguously requires Ikalina to actually retire and leave the employ of the City. The agreement provides that he was placed on administrative leave with no reporting requirements the day after the settlement agreement was signed. He was also required to turn in all of his City issued equipment. On its face, the agreement required Ikalina to *retire*. At that point he was no longer employed by the City and thus ineligible for benefits which require actual employment, as does DROP.

The question of whether the City was providing the appropriate benefits, including DROP, was a question of whether the City had properly carried out the terms of the agreement. The trial court did not err in adopting the arbitrator's findings and dismissing this case.

972 So. 2d at 965.

It is from that decision that we now seek review.

## II.

### SUMMARY OF ARGUMENT

The City's ordinances provide that the City's Pension Board has exclusive jurisdiction to "construe the provisions of the system and determine all questions arising thereunder," and "determine all questions relating to eligibility and participation [in the DROP]." Mr. Ikalina applied to the Pension Board to determine his eligibility for the DROP. However, the City made its own determination that he was not eligible. The issue before the trial court was whether the Pension Board had exclusive jurisdiction to make that determination. The trial court should have reversed the City's eligibility determination and submitted the issue to the Pension Board. Instead, the court referred the matter to an arbitrator.

Under indistinguishable circumstances, the First DCA has held that when an executive body has been statutorily given exclusive jurisdiction to determine a particular matter, that jurisdiction preempts the jurisdiction of an arbitrator over the controversy. See *State v. Int'l Union of Police Ass'ns*, 927 So. 2d 946 (Fla. 1<sup>st</sup> DCA), *rev. denied*, 944 So. 2d 345 (Fla. 2006), and *Int'l Ass'n of Firefighters v. City of Ocala*, 371 So. 2d 583 (Fla. 1<sup>st</sup> DCA 1979). Hence, the Fourth DCA's decision expressly and directly conflicts with the decisions of the First DCA.

### III.

#### ARGUMENT

**The Fourth DCA’s Decision Expressly and Directly Conflicts With Decisions of the First DCA in *State v. Int’l Union of Police Ass’ns*, 927 So. 2d 946 (Fla. 1<sup>st</sup> DCA), rev. denied, 944 So. 2d 345 (Fla. 2006), and *Int’l Ass’n of Firefighters v. City of Ocala*, 371 So. 2d 583 (Fla. 1<sup>st</sup> DCA 1979).**

By its own municipal ordinances, the City provided that its Pension Board has exclusive jurisdiction to “construe the provisions of the system and determine all questions arising thereunder,” and “determine all questions relating to eligibility and participation [in the DROP].” The question before the trial court was whether Mr. Ikalina had been terminated, and thus would be ineligible for the DROP, or whether he had attained “normal retirement status” and would be eligible for the DROP pursuant to the City ordinances. This was a question of statutory interpretation that was within the exclusive jurisdiction of the Pension Board.

Mr. Ikalina applied to the Pension Board for the DROP, thereby invoking the Board’s authority to determine his eligibility. Instead of allowing the Board to make that determination, the City overrode the Board’s authority and made its own determination that Mr. Ikalina was ineligible for the DROP because he had been terminated from employment. The issue in the law suit filed by Mr. Ikalina against the City was whether the Board has acted unlawfully in overriding the Board’s

exclusive jurisdiction.

In referring the case to arbitration, and confirming the arbitrator's award, the trial court determined that the question of DROP eligibility was a question of whether the City had fulfilled the terms of its settlement agreement with Mr. Ikalina. The agreement itself, quoted in the Fourth DCA's opinion, is silent about DROP participation or eligibility. It merely states that Mr. Ikalina retired in good standing and "will receive all standard/normal retirement benefits that any other police department employee receives..."

Since the agreement itself does not address DROP eligibility, the question of DROP eligibility was one of statutory interpretation. The relevant city ordinances set forth the circumstances in which an employee is eligible for the DROP and give the Pension Board exclusive jurisdiction to determine DROP eligibility. Under these circumstances, the Board's jurisdiction preempted that of an arbitrator to determine whether Mr. Ikalina was eligible for the DROP.

The Fourth DCA rejected Mr. Ikalina's contention that the Pension Board's jurisdiction preempted that of the arbitrator. Instead, the Fourth DCA approved of the arbitrator's and the trial court's determination that Mr. Ikalina was ineligible for the DROP because his employment had been "terminated" – a term used in the City's ordinances to determine when an employee's eligibility for the DROP ends.

In two decisions, the First DCA determined under indistinguishable circumstances that an executive board's statutory exclusive jurisdiction over a controversy preempts the jurisdiction of an arbitrator. In *State v. Int'l Union of Police Ass'ns*, 927 So. 2d 946 (Fla. 1<sup>st</sup> DCA), *rev. denied*, 944 So. 2d 345 (Fla. 2006), a collective bargaining agreement provided for resolution of grievances by arbitration. The term "grievance" was defined as "a dispute involving the interpretation or application of the specific provisions of the agreement." The controversy involved whether a unilateral change in a term or condition of employment has occurred – a matter not addressed in the collective bargaining agreement.

Under these circumstances, the First DCA held that the dispute fell within the exclusive jurisdiction of PERC pursuant to Chapter 447, Fla. Stat.: "While PERC may have the power to defer to arbitration, only it may make that determination.... A party may not bypass PERC's jurisdiction and proceed directly to arbitration." 927 So. 2d at 946.

Likewise, in *Int'l Ass'n of Firefighters v. City of Ocala*, 371 So. 2d 583 (Fla. 1<sup>st</sup> DCA 1979), the collective bargaining agreement provided that at the end of 30 days of negotiation over the renewal of the agreement, "any unresolved issues shall be submitted to arbitration..." The City and the Union could not agree on matters to be included in the renewal contract. The Union advised PERC that the parties had

reached an impasse and requested that PERC appoint a special master. The commission appointed a special master, but the parties did not meet with the special master because the proceedings were stayed pending resolution of the City's unfair labor practice charge. The Union requested arbitration and filed a motion with PERC to stay the proceedings pending arbitration. PERC denied the Union's motion. The City filed in the circuit court a motion to dismiss the Union's application for appointment of an arbitrator and for an order compelling arbitration. The trial court granted the City's motion.

The First DCA affirmed the trial court's determination that the matter had been preempted by the Public Employees Relations Commission Act, the provisions of which were activated when the Union declared an impasse and requested PERC to appoint a special master:

It was the legislative intent by the enactment of Chapter 447, Florida Statutes (1977), to provide the method of resolving labor disputes between public employers and public employees, with the Public Employees Relations Commission having preemptive jurisdiction as to such matters. We find that the disputes existing between the City and the Union are "arguably" covered by the provisions of Chapter 447, Florida Statutes (1977).... Jurisdiction over the disputes between the Union and the City having been preempted in favor of the Public Employees Relations Commission, such Commission has jurisdiction of the disputes pursuant to the provisions of such chapter.

371 So. 2d at 585.

These two decisions of the First DCA expressly and directly conflict with the

decision of the Fourth DCA below, in which the Fourth DCA concluded that the arbitrator had authority to determine Mr. Ikalina's DROP eligibility, notwithstanding City ordinances that vest exclusive jurisdiction over DROP eligibility determinations in the City's Pension Board. Accordingly, we respectfully request that the Court exercise its discretionary jurisdiction to review decisions of the DCAs that expressly and directly conflict.

**IV.**

**CONCLUSION**

It is respectfully submitted that the Court should accept jurisdiction based on express and direct conflict.

Respectfully submitted,

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**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that a true and correct copy of the foregoing was furnished by U.S. mail on May 5, 2008, to: Carlos E. Mustelier, Jr., Esq., 1680 N.E. 135<sup>th</sup> Street, North Miami, FL 33181; and Julie F. Klar, Esq., 3099 E. Commercial Blvd., Suite 200, Ft. Lauderdale, FL 33308.

\_\_\_\_\_  
DAVID B. PAKULA

**CERTIFICATE REGARDING FONT**

The undersigned certifies that this brief uses 14-point Times New Roman type in compliance with Fla. R. App. P. 9.210(a)(2).

\_\_\_\_\_  
DAVID B. PAKULA