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EMPLOYMENT - OHIO

State ex rel. International Association of Fire Fighters, Local 1536, AFL-CIO v. Sakacs

Supreme Court of Ohio - August 29, 2023 - N.E.3d - 2023 WL 5535189 - 2023-Ohio-2976

Firefighters' union brought action against city, mayor, and city civil service commission, seeking a declaration that the fire chief's position, which was filled one day after the incumbent fire chief's retirement when the mayor rehired fire chief who had just retired, was subject to a competitive promotional-examination process, a permanent injunction prohibiting non-competitive means for filling vacancies within the city's fire department, and a writ of mandamus ordering the mayor to declare a vacancy in the fire chief's position, administer an examination, and make an appointment to fill the vacancy.

After allowing fire chief to intervene, the Court of Common Pleas granted the city's and mayor's motions for partial judgment on the pleadings as to punitive damages and attorney fees and denied the union's motion for summary judgment and granted summary judgment to defendants on the union's remaining claims. Union appealed. The Eleventh District Court of Appeals affirmed. Appeal was allowed.

The Supreme Court held that:

- Fire chief position became vacant when incumbent chief retired and thus had to be filled through statutory competitive promotional-examination process, and
- City's charter did not authorize city's mayor to appoint the incumbent fire chief to that position one day after he had retired as fire chief.

Fire chief position in city's fire department became vacant when the incumbent chief retired, and thus, the position had to be filled through the statutory competitive promotional-examination process, despite the fact the mayor purported to rehire the incumbent fire chief for the fire chief's position on the day after the incumbent retired, and notwithstanding that the incumbent fire chief did not intend to permanently relinquish the position when he retired; the incumbent could not have been rehired for a position that was not vacant.

City, its mayor, and its civil service commission forfeited their argument on appeal before the Supreme Court that city's charter authorized the mayor to appoint incumbent fire chief to that position one day after he had retired from the position because the charter was in direct conflict with statute requiring vacancies in positions above the rank of regular fire fighter to be filled using the competitive promotional-examination process and, therefore, the charter controlled, where this argument was neither raised in the trial court nor the court of appeals in suit brought by firefighter's union alleging the failure to fill vacancy in fire chief position through the competitive promotional-examination process upon incumbent chief's retirement violated civil-service laws.

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