

2024

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Recommended Citation

Rider, Tyler (2024) "State ex. rel. Internatl. Ass'n of Fire Fighters, Local 1536, AFL-CIO v. Sakacs, 224 N.E.3d 1110," *Ohio Northern University Law Review*: Vol. 50: Iss. 2, Article 9.
Available at: https://digitalcommons.onu.edu/onu_law_review/vol50/iss2/9

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**State ex rel. Internatl. Assn. of Fire Fighters, Local 1536, AFL-
CIO v. Sakacs
224 N.E.3d 1110**

I. INTRODUCTION

In *State ex rel. Internatl. Assn. of Fire Fighters, Local 1536, AFL-CIO v. Sakacs*, the Supreme Court of Ohio was asked to determine when a vacancy has occurred in a fire chief's position.¹ Under Ohio law and precedent, a prestigious position such as fire chief is filled through a competitive promotional examination.² The Ohio Revised Code 124.48 does not define the term "vacancy," so the Court determined the meaning by looking at the term's plain and ordinary meaning.³

The Court was faced with deciding the meaning of "vacancy" and the issue of whether a vacancy is created when a fire chief leaves their position and intends to return, thus triggering the statutorily mandated promotional exam.⁴ The Court held that "a vacancy occurs when the incumbent in a promoted-rank position in a fire department retires, and therefore the position must be filled through the process set forth in R.C. 124.48."⁵ The Court explained that the intent of the individual retiring is irrelevant because it is not required by R.C. 124.48 and a vacancy is created as soon as the incumbent retires, triggering the promotional exam process.⁶

II. STATEMENT OF FACTS AND PROCEDURAL HISTORY

On January 6, 2020, Mr. James G. Powers retired from the position of fire chief after serving the City of Wickliffe's Division of Fire for over thirty years; sixteen of which were as city fire chief.⁷ The Mayor of Wickliffe, John Barbish, filed paperwork with the Ohio Police and Fire Pension Fund to verify Powers's retirement and instructed the city's finance director to assist Powers with securing his pension benefits on January 6, 2020.⁸ The next day, Barbish rehired Powers to serve as Wickliffe's fire chief, and he was sworn into the position the day after he retired.⁹ The reason behind the retire-rehire

1. State ex rel. Int'l Ass'n of Fire Fighters v. Sakacs, 224 N.E.3d 1110, 1112.

2. *Id.*

3. *Id.* at 1116.

4. *Id.* at 1117.

5. *Id.* at 1112-13.

6. *Sakacs*, 224 N.E.3d at 1117.

7. *Id.* at 1113.

8. *Id.*

9. *Id.*

plan was to allow Powers to receive his pension benefits while still being employed as the fire chief.¹⁰

The Division of Fire for the city of Wickliffe is headed by one fire chief, and has four captains, three lieutenants, and other lower rank firefighters.¹¹ The fire fighters are part of the competitive-classified civil service.¹² Appointments and promotions are subject to the score they receive on the civil service competitive examination.¹³ The city of Wickliffe is in a collective-bargaining agreement with the International Association of Fire Fighters, Local 1536.¹⁴ The fire chief is the only employee in the Division of Fire who is not a bargaining-unit employee and is not part of the Local 1536 union.¹⁵

On February 7, 2020, the fire fighter's union Local 1536 sent an email to Wickliffe Civil Service Commission stating that when Powers retired, the retirement created a vacancy in the fire chief position.¹⁶ However, the commission did not believe there was a vacancy in the position because there was no resignation, Powers continued his service as fire chief, and there was no break in payroll.¹⁷

In May 2020, Local 1536 sent a letter to the city of Wickliffe's law director expressing that Power's retirement created a vacancy in the fire chief position, and that the city should conduct a competitive promotional examination to fill the vacancy.¹⁸ With no action being taken by the city, Local 1536 sent another letter to the law director demanding that Barbish the mayor of Wickliffe be prosecuted under R.C. 124.62 for failing to declare a vacancy of the fire chief position.¹⁹ However, the law director declined to take any legal action against Barbish.²⁰

After no action had been taken by the Civil Service Commission nor the local law director, Local 1536 filed a complaint in Lake County Court of Common Pleas against the city, the mayor, and the commission, Chief Powers would intervene in the action, and the defendants were collectively referred to as Wickliffe.²¹ Local 1536 argued that Wickliffe failed to fill the vacancy of the fire chief position properly.²² They argued that Wickliffe

10. *Id.*

11. *Sakacs*, 224 N.E.3d at 1113.

12. *Id.*

13. *Id.*

14. *Id.*

15. *Id.*

16. *Sakacs*, 224 N.E.3d at 1113.

17. *Id.*

18. *Id.* at 1113-14.

19. *Id.* at 1114.

20. *Id.*

21. *Sakacs*, 224 N.E.3d at 1114.

22. *Id.*

should have held a competitive promotional exam when Powers retired, and the failure to do so “violated civil-service laws and deprived eligible captains of the opportunity to ascend to the position of fire chief.”²³ The trial court granted Wickliffe’s motion for summary judgment.²⁴

Local 1536 appealed to the Eleventh District Court of Appeals arguing that the trial court failed to properly apply the law when concluding there was no vacancy.²⁵ In a split decision the Eleventh District affirmed the trial court’s decision and held that Powers’s retirement did not create a vacancy.²⁶ The court of appeals analyzed R.C. 124.48, which sets forth the procedure for filling a vacancy in fire departments, and it concluded that since “Powers did not intend to permanently leave the position,” a vacancy was not created.²⁷ They held that Powers’s temporary separation from the position and his intent to return to that position was not a vacancy because these actions were inconsistent with how the term vacancy is used in R.C. Chapter 124.²⁸ Next, the court of appeals examined R.C. 124.50, which sets forth the procedures for the reinstatement process of fire fighters who have resigned from their position.²⁹ The court of appeals stated that under R.C. 124.50 there are two elements for a valid resignation: “(1) intent to resign and (2) an act of relinquishment.”³⁰ The court of appeals found that neither element was present and concluded that Powers never resigned because Powers had returned to work as chief the next day and continued to serve without interruption.³¹ Local 1536 appealed to the Ohio Supreme Court.³²

III. THE COURT’S DECISION AND RATIONALE

A. *Unanimous Decision by Justice Stewart*

Justice Stewart delivered the opinion of the unanimous court.³³ The Ohio Supreme Court began by accepting two propositions of law.³⁴ First, a vacancy for a position that is subject to a competitive promotional exam, like a fire chief, is vacated at the time the person holding that position retires.³⁵ The retirement is a permanent separation of employment regardless of the

23. *Id.*

24. *Id.*

25. *Id.*

26. *Sakacs*, 224 N.E.3d at 1114.

27. *Id.*

28. *Id.*

29. *Id.*

30. *Id.*

31. *Sakacs*, 224 N.E.3d at 1114.

32. *Id.*

33. *Id.* at 1112.

34. *Id.* at 1114-15.

35. *Id.* at 1115.

intent at the time of the retirement, and that vacancy must be filled through the “statutorily-mandated competitive promotional examination process.”³⁶ Second, an individual’s resignation from fire chief prohibits reinstatement to any position above the rank of a regular firefighter.³⁷ An individual’s voluntary resignation causes an immediate vacancy regardless of the purpose of the resignation.³⁸ The Court found merit in Local 1536’s first proposition of law, and reversed the judgment of the court of appeals, and remanded the case for the court of appeals to examine Local 1536’s assignments of error.³⁹

The Court reviewed the court of appeals decision de novo.⁴⁰ Justice Stewart established what Ohio precedent is and what R.C. 124.48 states:

Whenever a vacancy occurs in a promoted rank in a fire department and no eligible list for that rank exists, the appointing authority shall certify the fact to the civil service commission. The civil service commission, within sixty days of the vacancy, shall conduct a competitive promotional examination. After the examination has been held, an eligible list shall be established, and the civil service commission shall certify to the appointing authority the name of the person on the list receiving the highest grade. Upon the certification, the appointing authority shall appoint the person so certified within ten days. When an eligible list exists and a vacancy occurs in a position for which the list was established, the appointing authority shall certify the fact to the civil service commission. The person standing highest on the list shall be certified to the appointing authority, and that person shall be appointed within ten days.⁴¹

The term vacancy is not defined in R.C. 124.48, and the Court analyzed the term under its plain and ordinary meaning.⁴² Justice Stewart used Black’s Law Dictionary to define vacancy:

1. The quality, state, or condition of being unoccupied, esp. in reference to an office, post, or piece of property. 2. The time during which an office, post, or piece of property is not occupied. 3. An unoccupied office, post, or piece of property; an empty place. Although the term sometimes refers to an office or post that is temporarily filled, the more usual reference is to an office or post that

36. *Sakacs*, 224 N.E.3d at 1115.

37. *Id.*

38. *Id.*

39. *Id.*

40. *Id.*

41. *Sakacs*, 224 N.E.3d at 1115-16.

42. *Id.* at 1116.

is unfilled even temporarily. *** 4. A job opening; a position that has not been filled.⁴³

The Court found that these definitions of vacancy supported Local 1536's argument that the fire chief position became vacant on January 6, 2020, when Powers retired.⁴⁴

In *Zavisin v. Loveland*, a Lieutenant of the Loveland Police Department retired, and the position was abolished instead of holding the statutorily mandated promotional exam.⁴⁵ The Supreme Court of Ohio held that "a vacancy for purposes of R.C. 124.44 *automatically occurs upon the retirement of the incumbent.*"⁴⁶ The Court here found the same, that when Powers retired from fire chief, the position became vacant, and Ohio procedure requires the promotional examination to be held.⁴⁷ Justice Stewart explained that "a person cannot be *rehired* for a position that is *not* vacant" and a vacant position such as fire chief automatically triggers the statutorily mandated promotional examination.⁴⁸ Justice Stewart took a logical approach by examining the procedure of Ohio and the plain language of vacancy to determine that a vacancy occurs in a promoted rank position when that incumbent retires.⁴⁹ Therefore, the city of Wickliffe was required to follow the procedures in R.C. 124.48.⁵⁰

Powers argued that a vacancy in the fire chief position did not occur because he did not intend to abandon his position, and that it was not permanently relinquished.⁵¹ He relied on the fact that he retired for the sole purpose of receiving his pension benefits and that he still occupied the position.⁵² This argument failed because the Court found that R.C. 124.48 has no intent requirement, and "a vacancy in a promoted-rank position in a fire department occurs automatically upon the incumbent's retirement," and when a vacancy does occur, the commission shall conduct the promotional exam.⁵³ Justice Stewart held that the intent of the incumbent when leaving the position is irrelevant when determining whether there is a vacancy because R.C. 124.48 has no intent requirement and the plain and ordinary meaning of vacancy has nothing to do with intent.⁵⁴

43. *Id.*

44. *Id.* at 1116.

45. *Id.* (discussing *Zavisin v. Loveland*, 541 N.E.2d 1055 (Ohio 1989)).

46. *Sakacs*, 224 N.E.3d at 1116 (internal quotations omitted) (emphasis in original).

47. *Id.* at 1117.

48. *Id.* (emphasis in original).

49. *Id.*

50. *Id.*

51. *Sakacs*, 224 N.E.3d at 1117.

52. *Id.*

53. *Id.*

54. *Id.*

Wickliffe raised the argument that the city's charter is in direct conflict with R.C. 124.45, the mayor has appointment authority, and any head of a department is exempt from the civil service examination.⁵⁵ However Wickliffe never raised this argument in trial court nor the court of appeals, so this argument was forfeited.⁵⁶ Despite this, the Court analyzed the argument and found that municipalities can exercise powers of local self-government.⁵⁷ Thus, municipalities can have laws that are not in conflict with general laws, and laws that are not limited or taken by the Constitution.⁵⁸ In the event that a city charter is in conflict with state law, the "city charter prevails on matters of local self-government."⁵⁹ The provision in the city charter of Wickliffe, Article VI, Section VI-3, states that "the civil service examination 'shall not be required for the appointment of *** any head of a department.'"⁶⁰ However, Wickliffe ignored Article V, Section V-4 of their city charter which states that "[t]he Director of Public Safety shall be the head of the Division of Police, Division of Fire, Division of Building Engineering and Inspection, and the Division of Health."⁶¹ Therefore, the director of public safety is the head of the Division of Fire—not the fire chief—and only the director of public safety is exempt from the civil service promotional exam.⁶² The Court reversed and remanded the case to the court of appeals and did not discuss the second proposition of law because they resolved the matter on the first proposition of law.⁶³

IV. ANALYSIS

The Court in *State ex rel. Internatl. Assn. of Fire Fighters, Local 1536, AFL-CIO v. Sakacs*, took a textualist and logical approach when upholding the procedure of R.C. 124.48 and reached the correct outcome. The dissenting court of appeals judge explained: "[T]o be rehired necessarily implies an existing vacancy which would trigger the statutorily mandated promotional process to fill the retired incumbent's position."⁶⁴ This reasoning exemplifies the logical approach the Court took.⁶⁵ By looking at the language of the statute and giving the term vacancy its plain and ordinary

55. *Id.* at 1117-18.

56. *Sakacs*, 224 N.E.3d at 1117.

57. *Id.*

58. *Id.* at 1118.

59. *Id.*

60. *Id.*

61. *Sakacs*, 224 N.E.3d at 1118.

62. *Id.*

63. *Id.*

64. *Id.* at 1117.

65. *Sakacs*, 224 N.E.3d at 1117.

meaning, the Court was able to discern what the applicable law and procedure is.⁶⁶

The purpose of the promotional exam is to ensure that the most qualified individual receives the position.⁶⁷ The exam consists of matters related to the duties of the position sought, a written component, and practical demonstrations of machine operation.⁶⁸ Additionally, seniority in a fire department is awarded on the following point system: “one point shall be added for each of the first four years of service, and six-tenths of a point shall be added for each year for the next ten years of service.”⁶⁹ Chief Powers should not be too worried about retaking the exam because he will be receiving many points based on seniority and has already scored the highest once.

The holding of *Sakacs* strikes down the ‘retire-rehire’ plan, also known as the double-dipping plan for fire fighters across the state of Ohio.⁷⁰ At this point, it is unknown the effect this case will have on fire departments across the state, according to Dave Graham, a spokesperson for the Ohio Police & Fire Pension Fund, stated “there are a ‘relatively low’ number of public safety members who use the ‘retire-rehire’ to get benefits from the fund[.]”⁷¹ Many public safety officials do not use this plan because the pension fund enrollees need to wait at least two months before being rehired for a public position, or else they lose two months’ worth of benefits.⁷² This is due to the deferred retirement pension program.⁷³ The president of the Ohio Association of Professional Firefighters labor union, Jon Harvey, predicted this will “affect ‘very few’ fire departments” and the impact will be seen at fire departments that have stagnate leadership at the top.⁷⁴ He also stated that “if you have a progressive fire chief that does a good job and can participate and do well on a competitive test – I think the impact will be good.”⁷⁵ The decision by the Ohio Supreme Court is upholding what the law of Ohio is, and thus, Chief Powers can still be the fire chief of Wickliffe if he takes the promotional exam and obtains the highest score.⁷⁶

66. *Id.* at 1116.

67. OHIO REV. CODE ANN. § 124.45.

68. *Id.*

69. *Id.*

70. Jeremy Pelzer, *OH Supreme Court Axes Chief's 'Retire-Rehire' Move*, FIREHOUSE (Aug. 30, 2023), <https://www.firehouse.com/careers-education/news/53070825/oh-supreme-court-axes-wickliffe-chiefs-retire-rehire-move>.

71. *Id.*

72. *Id.*

73. *Id.*

74. *Id.*

75. Pelzer, *supra* note 70.

76. OHIO REV. CODE ANN. § 124.46.

At first glance, it may appear to some people that the Ohio Supreme Court is undermining the double-dipping plan. However, the Court was only allowed to hear this case due to the unique nature of the fire chief position, and because that position is subject to the civil service laws of Ohio.⁷⁷ When asked how this would affect the decision of the Ohio Attorney General (OAG) to double dip, the OAG's office agreed that the case was a procedural violation and replied "the decision had nothing to do with double-dipping, but rather a city's failure to conduct a promotional exam process before rehiring someone into a classified civil service position."⁷⁸

Double-dipping is an issue in Ohio⁷⁹ and it is unlikely that the Ohio Supreme Court can address double-dipping in general, rather, it is likely something that can only be addressed by the legislature.⁸⁰ In 2018, the Ohio Legislature attempted to address double-dipping with House Bill 708, which was called "Double Dippers Inappropriately Privileged" (DDIP).⁸¹ The act would "provide that an individual retiring on or after the effective date of this act from one of the state's public retirement systems who is re-employed as a public employee will not receive the pension portion of the retirement allowance for the period of employment."⁸² This bill failed and was never enacted.⁸³ Other state legislatures have been discussing the double-dipping issue as well.⁸⁴ For example, Texas has been trying to pass a bill that prevents long-serving state legislators from receiving their pension while still receiving a state salary.⁸⁵ The state legislature is the solution to the problem of double-dipping.

Currently, Ohio has over \$68 billion in unfunded liabilities in their public pensions.⁸⁶ An unfunded liability is the "difference between the total amount due to retirees and the amount of money the fund actually has to make those payments."⁸⁷ The Court's decision in this case may help reduce the debt because fire departments specifically will no longer be obligated to pay the

77. *Sakacs*, 224 N.E.3d at 1113.

78. Pelzer, *supra* note 70.

79. Zachary Christensen, *Examining the solvency and resiliency of Ohio's public pensions*, REASON FOUNDATION (Dec. 15, 2023), <https://reason.org/testimony/examining-the-solvency-and-resiliency-of-ohios-public-pensions>; *Unfunded liabilities*, BALLOTPEDIA, https://ballotpedia.org/Unfunded_liabilities (last visited Jan. 23, 2024).

80. *Ohio bill seeks to end 'double-dipping'*, THE HIGHLAND COUNTY PRESS (Nov. 14, 2018), <https://highlandcountypress.com/news/ohio-bill-seeks-end-double-dipping#gsc.tab=0>.

81. *Id.*

82. H.B. 708, 132nd Gen. Assemb., Reg. Sess. (Ohio 2017-18).

83. *Id.*

84. See generally James Barragán, *Bills advance to close loophole allowing some lawmakers to increase their pay to \$140,000*, THE TEXAS TRIBUNE (Mar. 29, 2023), <https://www.texastribune.org/2023/03/29/texas-legislature-double-dip-pension-salary/>.

85. *Id.*

86. Christensen, *supra* note 79.

87. *Unfunded liabilities*, *supra* note 79.

fire chief's salary once the fire chief retires, instead, fire departments can put that money into the pension program.⁸⁸ Additionally, taxpayers are footing the bill for the double-dipping and retire/rehire of public employees.⁸⁹ Notably, "[t]housands of public employees in Ohio reap rewards of a generous salary, all while collecting a pension at taxpayers' expense."⁹⁰ The profession that does it the most are school employees, although it is less common for public officials like the Attorney General to double-dip.⁹¹ But how can we blame these individuals from taking advantage of the system after they have worked this job for most of their life? The real problem is with state policy and laws that permit the double-dipping plan.⁹² *Sakacs* is only a minor step to improving the double-dipping in Ohio.⁹³ Hopefully, the *Sakacs* decision puts Ohio lawmakers on notice about the policies and laws currently in place.

V. CONCLUSION

The court in *State ex rel. Internatl. Assn. of Fire Fighters, Local 1536, AFL-CIO v. Sakacs* reached the correct outcome by taking a textualist approach and following the procedure of Ohio law.⁹⁴ The court examined R.C. 124.48 and determined the position of fire chief becomes vacant as soon as the incumbent retires regardless of the intent of the retiree.⁹⁵ The law states that the fire chief position is vacant when the previous fire chief retires.⁹⁶ This automatically triggers the promotional examination requirement.⁹⁷ Although this decision will only impact firefighters, it may also have an effect on other professions in Ohio to help reduce double-dipping.⁹⁸

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88. *What is OPERS?*, OHIO PUBLIC EMPLOYEES RETIREMENT SYSTEM, <https://www.opers.org/members/whatisopers.shtml#:~:text=You%20contribute%20a%20percentage%20of%20your%20salary%20to,salary.%20OPERS%20invests%20this%20money%20for%20your%20retirement.> (last visited, Mar. 27, 2024).

89. *Ohio should do away with double dipping*, TRIBUNE CHRONICLE (July 27, 2023), <https://www.tribtoday.com/opinion/editorials/2023/07/ohio-should-do-away-with-double-dipping/>.

90. *Id.*

91. Jo Ingles, *Democrats blast Yost for 'double dipping' with salary and pension*, WOSU PUBLIC MEDIA (Jan. 12, 2023), <https://news.wosu.org/2023-01-12/dave-yost-to-receive-public-pension-during-second-term-as-ohio-attorney-general>.

92. *Ohio should do away with double dipping*, *supra* note 89.

93. *See Sakacs*, 224 N.E.3d 1110.

94. *Id.* at 1112-13.

95. *Id.* at 1117.

96. *Id.* at 1114-15.

97. *Id.* at 1117.

98. *See Sakacs*, 224 N.E.3d 1110.