

PHOENIX

Arizona Supreme Court strikes down 'release time' for Phoenix workers

**Taylor Seely**

Arizona Republic

Published 6:01 a.m. MT Aug. 2, 2024 | Updated 6:01 a.m. MT Aug. 2, 2024

Phoenix violated the state constitution by paying city employees nearly half a million dollars to work for their labor union during work hours, the Arizona Supreme Court ruled Wednesday. The decision throws into question the legality of labor union contracts in Phoenix, other cities and the state.

In a unanimous ruling, the justices said Phoenix's contract with the American Federation of State, County and Municipal Employees, or AFSCME, violated the gift clause of the Arizona Constitution because its "release time" provisions were "substantially disproportionate to any benefits received by the city."

The provisions release city employees from their normal job duties to conduct "lawful union activities" while the city still pays their normal wages. The state gift clause bars governments from giving money to private groups without a roughly equal public benefit.

Phoenix's 2019 contract with AFSCME, which represents 1,500 blue-collar city employees, including sanitation workers, childcare providers, detention officers and 911 dispatchers, provided roughly \$499,000 in release time.

The city and union argued that release time promotes positive worker-management relations and that the cost should be weighed against the total benefit the workers provide the city.

The Maricopa County Superior Court initially sided with the city, as did the Arizona Court of Appeals. The Arizona Supreme Court did not.

Justice Clint Bolick, authoring the opinion, wrote that "the costs and benefits here are so one-sided that it is difficult to envision how such expansive release time provisions could ever survive (legality)."

The Arizona Supreme Court's decision delivers a significant loss for the local labor movement and upends a widespread practice used in cities such as Tucson, Mesa, Glendale and Peoria.

The latest ruling came after two non-unionized city employees sued the city in 2019 over release time given to AFSCME, saying the provisions violated their free speech rights, Arizona right-to-work laws and the gift clause.

The justices rejected the free speech and right-to-work claims but struck down Phoenix's release time provisions on the grounds that the city was getting "microscopic" returns compared to what it spent.

The high court also doubted whether release time provided any public benefit at all since the city had no control or supervision over the employees, "which is an essential criterion in determining public purpose," Bolick wrote. That could invite more legal challenges.

"The plain language of the Gift Clause aims to prevent subsidies to private individuals, associations or corporations. The release time provisions at issue are precisely that: a 'release' from the ordinary duties for which employees were hired, to instead perform union activities," Bolick wrote.

He noted that while the justices pay deference to what elected officials view as a public benefit when evaluating for potential gift clause violations, the judiciary ultimately gets to decide.

The opinion also opened the door to legal challenges about funding release time through reduced or diverted employee compensation because employees "would be required, against their will, to support union activities (including collective bargaining) with which they might disagree."

Jon Riches, Vice President of Litigation at the Goldwater Institute, a libertarian-leaning think tank that represented the non-unionized employees, said the ruling was a "watershed decision that ensures taxpayer dollars will be spent to advance public interests, not private special interests, including the politically powerful special interests of government labor unions."

Riches and the Goldwater Institute have long criticized union release time, saying the subsidies are especially "pernicious" when unions use the time to lobby political candidates and meet with political action committees.

He added that only 45% of employees AFSCME represents are members, meaning the bargaining unit "negotiated itself a very nice perk that didn't go to all employees but rather AFSCME itself."

Frank Piccioli, president of AFSCME's Phoenix branch, Local 2384, said the ruling takes workers' rights backward and criticized Bolick for not recusing himself given his prior employment at the Goldwater Institute.

"After 45 years of having union release time in the City of Phoenix to be able to help members get FMLA when it's denied, or fight for raises, or ballistic vests for detention officers, or higher wages to better staff 911, this seems to wipe that away and say, 'Never mind. We can no longer do that,'" Piccioli said.

"It means the workers of Phoenix no longer have a voice," he said, adding, "The reality is they don't like what we do because they don't like working people."

As union president, Piccioli is one of the city employees who is on full-time release. He represents union members in disputes with the city and said it's his work that keeps Phoenix from having to hire a gargantuan HR staff. He negotiates contracts, works on the health and safety team and keeps problems from going to court.

If he weren't on release, he would work as a 911 dispatcher.

The Supreme Court's ruling, he said, tells him to go back to his dispatcher job and "somehow do all this work at night" outside of city hours.

Doing that, he said, will hurt the city workers and, ultimately, the residents because better conditions for workers translates to better service for residents. He pointed to his advocacy pushing the city to hire more 911 dispatchers to reduce response times.

Piccioli denied using release time for political activity, pointing to the 2022 law passed by Gov. Doug Ducey. The law forbids union members from using release time to lobby for or against political candidates, legislation, ordinances or ballot measures — though it exempted police and fire union members, which Piccioli criticized.

Pro-union bill: Sen. Mark Kelly is backing a pro-union bill. Here's why that matters

Phoenix is evaluating labor contracts. How many union positions are affected?

Phoenix Communications Director Dan Wilson said city attorneys were evaluating all their labor union contracts in light of the ruling.

Wilson said he could not immediately provide the amount Phoenix spends on release time across their five union contracts per year. However, it is likely significant.

While AFSCME's city contract provided four full-time release positions, the city's contract with Phoenix Law Enforcement Association, which represents rank-and-file police officers, funds six full-time release positions.

Piccioli said representatives from all the Phoenix unions would meet over the next few days to discuss and understand the ruling's impacts.

A spokesperson for Phoenix Mayor Kate Gallego said the mayor "believes our working labor relationships have a significant public benefit. While she disagrees with the Supreme Court's decision today, the city seeks to comply with all court orders and will work to revise its MOU to reflect this ruling."

Arizona Supreme Court ruling backtracks but doesn't reverse its older decision

The Arizona Supreme Court's decision backtracks on its 2016 case, *Cheatham v. DiCiccio*, but it does not formally reverse it.

In that case, taxpayers, again represented by the Goldwater Institute, sued the city over the police union's release time positions, claiming gift clause violation. That high court accepted the city's argument that harmonious labor-management relations constituted adequate public benefits, and determined the positions did not violate the gift clause.

Release time didn't violate the gift clause, then-Chief Justice Scott Bales wrote, because the release time positions were negotiated in exchange for wages and benefits that would have otherwise been provided — unlike the current case. Also, the Bales court found, courts should defer to what cities say is a commensurate return.

Bolick, who was not on the Arizona Supreme Court in 2016, wrote of the *Cheatham* case that the court should not have paid such deference to elected officials on what constitutes adequate return because it is an "objective inquiry that does not involve subjective policy decisions."

Only two of the justices who were on the state Supreme Court in 2016 remain: Chief Justice Ann Timmer and Justice Robert Brummel. Both justices dissented in the *Cheatham* case, arguing release time did violate the state's gift clause.

In the opinion issued Wednesday, the justices left open one way governments could legally provide release time: vacation hours.

"Employees could voluntarily donate vacation hours for release time, thus potentially avoiding any Gift Clause violations," the opinion said.

Riches, of the Goldwater Institute, said all cities should evaluate their labor union contracts in light of the ruling.

"To the extent these gifts exist in other contracts, those contracts are now constitutionally suspect," Riches said.

Reporter Taylor Seely covers Phoenix for The Arizona Republic / azcentral.com. Reach her at tseely@arizonarepublic.com or by phone at 480-476-6116.