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Summary of City of North Las Vegas v. State, EMRB, 127 Nev. Adv. Op. No. 57

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ADMINISTRATIVE LAW – EQUITABLE TOLLING

Summary

An appeal of an order denying a petition for judicial review in a local government employment matter.

Disposition/Outcome

The Supreme Court of Nevada affirmed the district court’s denial of judicial review of a petition filed by the City of North Las Vegas (“the City”) and the North Las Vegas Police Department (“the Department”). The Court held that the doctrine of equitable tolling supported the Employee-Management Relations Board’s (“EMRB”) decision to hear an employee’s claim filed outside of the statute of limitations and found EMRB’s reasonably concluded that the Department interfered with an employee’s right to a pre-disciplinary hearing and discriminated against the employee on the basis of gender.

Factual and Procedural History

The issue before the Court arose from a claim from a former police officer, Eric Spannbauer (“Spannbauer”) for gender-based discrimination. During his probationary period at the City of North Las Vegas Police Department (“the Department”), the Department received a complaint accusing Spannbauer of making sexually inappropriate comments to a female driver. This charge did not prevent the Department from confirming Spannbauer as a nonprobationary officer, but the Department’s Internal Affairs Division nevertheless charged him with unprofessional conduct and placed him on administrative leave.

Dave Smith, (“Smith”), the President of officer’s union, The North Las Vegas Police Department Association (“the Association”), personally advised Spannbauer prior to the close of the Department’s investigation. Smith informed Spannbauer that his best option, should he wish to remain in law enforcement, would be to resign because the Department had the option of treating Spannbauer as a probationary employee for purposes of the investigation.

Spannbauer followed this advice, but learned five months after his resignation that a nonprobationary female employee of the Department accused of misconduct while off-duty during her probationary period was not warned of the possibility of the Department treating her as a probationary employee nor advised to resign. Less than two months after discovering this differential treatment, Spannbauer filed a complaint with the EMRB against the Association and the Department alleging several prohibited employment practices. Although this filing

¹ By Colin Seale

technically violated the six-month statute of limitations under NRS 288.110², the EMRB asserted jurisdiction because Spannbauer did not know and could not have known about the female employee's differential treatment until it occurred. The EMRB also found that the Association committed unfair labor practices and ordered the City to reinstate Spannbauer to paid administrative leave pending a predisciplinary hearing.

Discussion

Justice Cherry wrote for the unanimous Court, sitting en banc. The Court first noted that EMRB rulings are granted significant deference, especially in their findings of fact. The Court found that the doctrine of equitable tolling supported the EMRB's decision to hear Spannbauer's complaint even though he filed it more than six months after his resignation. The Court reasoned that procedural technicalities should not bar discrimination claims when justice requires tolling of the statute of limitations,³ therefore the EMRB properly assumed jurisdiction. Spannbauer diligently filed his claim within two months of discovering the differential treatment of the female employee; therefore the Court concluded that the assumption of jurisdiction was not unfair prejudice against the Department.

Furthermore, the Court found that even though Spannbauer voluntarily resigned, Smith interfered with his rights to a predisciplinary hearing by advising Spannbauer that going through with a hearing would limit his future career opportunities in law enforcement. Substantial evidence supported Spannbauer's claim of gender discrimination under NRS 288.110(1)(f)⁴ because he and the female employee were similarly situated and the Department offered no legitimate, nondiscriminatory reason treating Spannbauer and the female employee differently.

Conclusion

The doctrine of equitable tolling applies to EMRB claims filed outside the statute of limitations if the claimant diligently files a claim soon after learning relevant facts. A filing under these circumstances does not create unfair prejudice against the employer or the City. It is not an abuse of discretion for the EMRB to rely on substantial evidence to find that the Department interfered with an employee's rights.

² NEV. REV. STAT. 288.110(4) (2007).

³ See *Copeland v. Desert Inn Hotel*, 99 Nev. 823, 826, 673 P.2d 490, 492 (1983).

⁴ NEV. REV. STAT. 288.110(1)(f) (2007).