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LA COUNTY POLICE CHIEFS' ASSOCIATION

LEGAL UPDATE

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COURT OF APPEAL AFFIRMS AN AGENCY'S RIGHT TO ASSIGN PERSONNEL IN THE BEST INTERESTS OF THE AGENCY

In *Benach v. County of Los Angeles*, a case handled by **Scott Tiedemann** and **Jolina Abrena** of Liebert Cassidy Whitmore's Los Angeles Office, the California Court of Appeal held that removing a deputy sheriff from his special assignment as a pilot "without a concomitant loss of rank or pay" is not a punitive action which entitles the deputy sheriff to an administrative appeal under the Public Safety Officers Procedural Bill of Rights Act. The case offers law enforcement management greater flexibility in assigning personnel in the best interests of an agency without incurring the uncertainty, delays and expenses associated with administrative appeals under the Act.[1]

The Facts

The plaintiff is a deputy sheriff with the Los Angeles County Sheriff's Department. On October 25, 2000, approximately 16 of the plaintiff's co-workers met with the Sheriff to present a memorandum signed by 30 members of the Department alleging that the plaintiff had created an unsafe and hostile work environment by engaging in reckless and unsafe flying, physical violence, and threatening behavior towards his fellow deputies. The Sheriff ordered an internal affairs investigation into the allegations and more than 75 current and former employees were interviewed. At the conclusion of the investigation, the Department notified the plaintiff that his presence at the Aero Bureau "coincide[d] with a less-than-harmonious working environment," that he was being permanently reassigned out of the Aero Bureau, and that he was being assigned as a detective. The plaintiff was told in writing that the decision to reassign him was not based on a determination that he had violated any policy or was to blame for the acrimony in Aero Bureau. He was also told that he would continue to be paid the bonus associated with assignment as a pilot, although he would not be allowed to fly aircraft. The plaintiff filed a lawsuit alleging, among other things, that the reassignment was a punitive action within the meaning of the Act and violated the one year statute of limitations.

The Law

The Act provides "no punitive action . . . shall be undertaken for any act . . . or other allegation of misconduct if the investigation of the allegation is not completed within one year of the public agency's discovery by a person authorized to initiate an investigation of the allegation of the . . . misconduct. . . . In the event that the public agency determines that discipline may be taken, it shall complete its investigation and notify the public safety officer of its proposed disciplinary action within that year, except . . . . [i]f the investigation involves more than one employee and

requires a reasonable extension." (Gov. Code, § 3304, subd. (d)(4).) "Punitive action" includes "any action that may lead to . . . demotion, . . . reduction in salary, . . . or transfer for purposes of punishment." (Gov. Code, § 3303.)

The Result

The Court of Appeal agreed with the County that the reassignment was not a punitive action within the meaning of the Act and therefore did not violate the one year statute of limitations. Although the plaintiff argued that "his work as a detective is less heroic than his job as a pilot," the Court of Appeal was not swayed. Since the plaintiff did not lose his rank or pay, the Court of Appeal held that the Department retained the right to reassign him in the best interests of the Department as determined by the plaintiff's supervisors. The Court of Appeal wrote: "there is a difference between a transfer intended to punish for a deficiency in performance, versus one that is intended to compensate for deficient performance. Such was the case here. Although Bayless did not find Benach violated any Departmental policy, he did conclude his continued presence at Aero impliedly deficient in the sense it was not conducive to a cooperative, productive working relationship with approximately 30 other members of that bureau's personnel, and exercised his supervisorial discretion to make a change to address that unique circumstance to best serve the Department's needs."

The Impact

The key in this case was the Sheriff Department's documentation of its decision to reassign the plaintiff, not only emphasizing the organizational goals sought to be effectuated by the reassignment, but also carefully crafted to distinguish the plaintiff's reassignment from a demotion and/or punitive transfer. Exercising similar care, other law enforcement agencies may, where appropriate, have an opportunity to reassign their personnel without unnecessarily incurring the costs and delays which are often associated with administrative appeals.

Benach v. County of Los Angeles is the latest in a string of recent LCW-generated appellate decisions supporting management's discretion to operate a law enforcement agency without unreasonable hindrance by employees asserting that their individual rights always take precedence over organizational needs.

In *Upland Police Officers Association v. City of Upland* (2003) 111 Cal. App.4th 1294, handled by **Scott Tiedemann** and **Peter Brown** of LCW's Los Angeles Office, the Court of Appeal held that a peace officer's right of representation under Government Code § 3303(i) is not unlimited. The Court of Appeal held that an officer could not delay an internal affairs interrogation by selecting a representative who was not reasonably available.

In *Gilbert v. City of Sunnyvale* (2005) 130 Cal.App.4th 1264, handled by **Cynthia O'Neill** of LCW's San Francisco office, the Court of Appeal limited a police officer's right to receive investigatory documents under both the Skelly due process procedures and the Act.

In *Claremont Police Officers Association v. City of Claremont* (2006) 39 Cal.4th 623, a case initially handled by **Richard Kreisler** and **Mark Meyerhoff** of LCW's L.A. office, the California Supreme Court held that implementation of a racial profiling study by a police department was a management prerogative and was not a mandatory subject of bargaining under the Meyers-Milias-Brown Act.

Also, in *Steinert v. City of Covina* (2006) 146 Cal.App.4th 458, a case handled by **Richard Kreisler** and **Jennifer Hong** of LCW's L.A. office, the Court of Appeal held that a peace officer was not entitled to the protections of the Act when asked questions by her supervisor in the ordinary course of duty where the supervisor did not suspect that the officer had engaged in serious misconduct.

Of course, the application of these decisions will vary depending upon the facts in a given case. Be sure to consult with your legal counsel about the application of these cases to your agency.

[1] The Court of Appeal also upheld the trial court's ruling following trial that the County had not breached an earlier settlement agreement with the plaintiff and the trial court's award of costs to the County.