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SPECIAL UPDATE

FIREFIGHTERS AND PUBLIC EMPLOYERS

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THE CALIFORNIA SUPREME COURT HOLDS THAT A FIREFIGHTER NEED NOT BE PROVIDED OPPORTUNITY TO RESPOND TO COMMENTS IN HIS SUPERVISOR'S FILE, WHICH WERE NOT VIEWED BY ANYONE ELSE, AND ONLY DOCUMENTED THE SUPERVISOR'S THOUGHTS AND IMPRESSIONS.

Summary

Under section 3325 of the Firefighters Procedural Bill of Rights Act (FBOR), a firefighter has the right to review and respond to any negative comment that is “entered in his or her personnel file, or any other file used for any personnel purposes by his or her employer.” This case presents the question whether the FBOR gives an employee the right to review and respond to negative comments in a supervisor’s daily log, consisting of notes that memorialize the supervisor’s thoughts and observations concerning an employee, which the supervisor uses as a memory aid in preparing performance plans and reviews.

The California Supreme Court held that here, because the log was not shared with or available to anyone other than the supervisor who wrote the log, it does not constitute a file “used for any personnel purposes by his or her employer” and the FBOR does not apply.

Facts

Captain Culp, plaintiff Poole’s supervisor, maintained what he called a “daily log” regarding each of the employees that he supervised. He created the log using both a computer and handwritten notes. He created a separate file for each employee and referred back to the files if he needed to discuss behavior with an employee. If the behavior continued, Culp might mention it during the employee’s performance review. Culp kept a log concerning Plaintiff from December of 2008 to July of 2010. He used the log as reference in preparing annual reviews and assessments of plaintiff under a performance improvement plan.

Plaintiff wrote to the director of human resources of Orange County Fire Authority, asserting that the inclusion of negative comments in his supervisor’s log without providing an opportunity to review those comments violated the FBOR. He requested that all negative comments be removed from the log and that all “personnel files” be made available for inspection. In response, the fire authority denied his request asserting that the FBOR did not apply to Captain Culp’s “supervisory notes.”

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Plaintiff and the Orange County Professional Firefighters Association filed a petition and complaint in the superior court, seeking declaratory and injunctive relief, damages, civil penalties, and a writ of mandate directing defendants to comply with the FBOR.

Trial Court

In denying relief, the trial court opined, “If Culp made a negative note about [plaintiff] in his notes, but did not address it in the yearly evaluation; it does not exist, at least for personnel purposes.”

Court of Appeal

The Court of Appeal reversed, reasoning that the daily log constituted a “file used for ... personnel purposes” (§ 3255 of the FBOR) because a substandard performance evaluation was based on adverse comments contained in the daily log and because Culp orally revealed some of the contents of the daily log to his battalion chief. Therefore, the Court of Appeal concluded that section 3255 required that plaintiff be given an opportunity to respond to the negative comments in the log before they were “made known to the employer.”

California Supreme Court

The California Supreme Court found that while the statutory language referring to a file “used for any personnel purposes by his or her employer” might, in isolation, be read broadly enough to include Culp’s log, courts must not construe statutes in isolation, but must read every statute with reference to the entire scheme of law so that the whole may be harmonized and retain effectiveness. This Court found that section 3255 is one of three neighboring provisions of the FBOR that concern the rights of firefighters with respect to their personnel files. Upon review of all three provisions in concert, the Court found that the Legislature was not concerned with any and all files that might in some sense be connected with personnel matters, rather it was concerned with “personnel files that are used or have been used to determine the firefighter’s qualifications for employment, promotion, additional compensation, or termination or other disciplinary action.”

Conclusion

The California Supreme Court held that a supervisor’s log that is used solely to help its creator remember past events does not fall within the scope of that definition.

Poole v. Orange County Fire Authority (SC S215300 8/24/15)

<http://www.courts.ca.gov/opinions/documents/S215300.PDF>