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INSIGHT

FLSA Update

by John Morton, Editor

As reported in the last issue of *INSIGHT*, the decision of the US Supreme Court in *Alden v. Maine* casts some doubt as to the success of PANJ's claim for overtime compensation in Federal District Court. In the *Alden* case, Probation Officers in Maine litigated the failure of the state to pay them overtime to which they claimed they were entitled under the Federal Labor Standards Act (FLSA). The Supreme Court effectively ruled that the states were immune from these statutes, in a five to four decision. Dennis J. Alessi, attorney with Fox and Fox, has devised several new legal arguments which may circumvent the potential effect of the *Alden* matter.

The first argument is based on the funding source for the probation departments during the period of time covered by the PANJ case. From 1988 through January 1, 1995, the counties were responsible for funding, and there is case law which indicates that the counties are not immune from litigation under the Federal Wage and Hour Law. PANJ will be asking the Federal Court to transfer this part of the case for the above-mentioned period to state court for resolution.

The second argument is based on language in the Phase Two agreement for the Professional Case-Related Unit. All the pending overtime claims were incorporated into the agreement in a separate section from the agreement on wages. This makes the overtime claims a negotiable issue, subject to arbitration in absence of a negotiated settlement. This argument will be used to convince the federal judge to transfer to arbitration the overtime claims for the period after January 1, 1995.

The third argument is also a backup argument to the second. PANJ is now the successor union to all the pre-1995 unions and has arbitration provisions in its current contract. There are New Jersey Supreme Court decisions which make state statutes covering terms and conditions of employment *de facto* provisions of

collective bargaining agreements, or contracts between an employer and a group of employees. PANJ will argue that federal statutes should be included as well, and request arbitration for the overtime claims.

The fourth argument is that any overtime claims subsequent to January 1, 1995 are subject to arbitration under the current contract. These post-state takeover claims are covered by a contract containing binding arbitration of grievances and an overtime provision. The contract also called for overtime after 35 hours for time worked after January 1, 1995, with certain exceptions. In arbitration, PANJ's claim could be expanded to cover these hours.

Mr. Alessi has filed the appropriate papers with the court and it is expected that Judge Politan will issue a decision at the end of November or early December, 1999. The results will be reported to the membership as soon as possible.

PANJ Meets With DOP Regarding Layoff Rules

by John Morton, Editor

Governor Whitman and the Department of Personnel (DOP) attracted much attention several months ago by announcing that the rules for layoffs would be changed to reflect job performance. Previously, layoffs had been based primarily on an employee's seniority within the state system. They made it clear that these rule changes could be imposed without going through the legislative process, and this left unions unable to use many of their methods to affect change. Public hearings regarding the rule changes were held around the state, and PANJ made statements in opposition to the changes at each one. While the large AFL-affiliated unions spoke out against the changes, the recently ratified CWA contract incorporates these rules which now include performance among other factors. PANJ continues to pursue the defense of the rights of Judicial employees.

The new rule changes call for calculating merit points based on performance evaluation ratings and years of seniority to produce a number for comparison when the appointing authority is forced to lay off employees. The rules would also affect an employee's ability to "bump" other employees in lower level titles, called demotional rights. These rules would go into effect on July 1, 2001, and be reconsidered three years later (sunset).

As with many of the DOP's plans, the Executive Branch was used as a model for the new rules. The Judiciary, which has been a statewide service since January 1, 1995, still retains many of its county-based characteristics. The vicinage structure adds further complexity to a personnel system that is only beginning to resemble the Executive Branch. Additionally, the Judiciary's performance evaluation system is in its infancy. It will take much time, effort, and input from managers and employees before this tool is producing meaningful results.

On September 9, 1999, PANJ officials and Stacey Rosenberg from Fox and Fox met with administrators from the DOP. We advised them of PANJ's position on the rules, and the difficulties in applying them to the Judiciary in its current condition. Much of the discussion centered around the performance evaluation. Some of the significant points of PANJ's position follow:

Workload standards and performance standards that are not set on a statewide basis. No true comparison can be made between employees in different locations.

Workloads are increasing in many areas including probation supervision, and the need for more resources is well recognized. The need has not been met, and satisfactory performance is more difficult to achieve.

The Exceptional rating is tied to money, and is therefore limited by budgetary considerations. The Executive Branch Exceptional rating is not tied to money.

Executive Branch employees move more freely between work locations than Judiciary employees. This would affect an employee's "bumping rights." (PANJ is still trying to negotiate a transfer policy similar to that enjoyed by other state employees in other branches of government.)

While the efforts of all the unions softened the effect of the proposed rule changes, PANJ still finds that this is a system that makes little sense for our branch of government. The inconsistencies faced by the Judicial Branch resulted from many years of county control, and will take more time to reform. PANJ continues to seek exception to these new rules. The DOP welcomed our comments and wanted to continue our dialog.

A MEMORIAL

by Robert Smith, President-Cumberland

The staff at Cumberland County Courthouse and surrounding community have been saddened by the loss of one of their coworkers, James E. Krawiec, who lost his battle with liver cancer on August 1st. A Principal Probation Officer in Family Court, Jim began his career in 1973 as a Probation Officer in the Juvenile Division. The experience he gained and the first hand knowledge of the families involved made him an invaluable asset to the judges and fellow staff members. Jimmy loved his work. He always knew exactly what to do and never hesitated to share that knowledge with his coworkers.

His devotion to his family was also apparent. We all know his wife Debbie and daughters Meggan and Gina because he always took the time to share that part of his life with all of us who worked with him. Whether he was coaching CYO basketball, delivering food baskets to the needy, or displaying unending patience and compassion to our clients, Jimmy always took the time to help others. We will all miss him.

James E. Krawiec 1948-1999

PANJ SCHOLARSHIP AWARDS

by Robert Smith, President-Cumberland

With the PANJ Training Conference fast approaching, the Scholarship Committee is eagerly awaiting the first scholarship application. Although the selection of winners is often difficult, surprisingly the most challenging hurdle faced every year is getting candidates to begin applying.

PANJ presents the two scholarships at the annual training conference in Atlantic City, each November. Each \$500 award is available to all active or retired PANJ members and their children.

The Dwight Watson Leadership- Scholarship Award is available to a candidate, enrolled in a 2 or 4 year college in pursuit of a career in criminal justice or probation.

The Ethan Janowitz Training-Educational Scholarship Award is available to any candidate enrolled in a 2 or 4 year college or vocational / technical school.

Candidates must have completed high school and maintained a 'B' average for college students or a 'C' average for vocational/technical students. Each candidate will be required to complete an application including financial data and copy of high school transcripts. Consideration will be given to the following characteristics: professionalism, personality, dedication, leadership, participation in school and community affairs and financial need.

Applications are available at the PANJ office. Deadline for applications is November 13, 1999.

PANJ Office- 617 Union Ave. United Professional Building 2, Brielle, N.J. 08730 Telephone (732) 223-1799

PANJ Incident Reports

by George Christie, President

The Camden Local of PANJ reported the following incidents:

Two Juvenile Officers were threatened by their probationers while making home visits.

One Juvenile Officer was threatened by the mother of a probationer.

On two separate occasions Probation Officers were cornered by a Pit Bull and a Rotweiler while making home visits. Both officers were placed in great fear for their safety and neither officer had any way to protect themselves.

One Probation Officer was conducting an office interview of a probationer who was taking medication for depression and anger management. The probationer became angry at one point in the interview and threatened the officer with physical harm. The probationer had to be removed from the building by a sheriff's officer.

While these reported incidents came from a few officers in one vicinage, there is no doubt that all field officers experience similar incidents on a regular basis. The profession you have chosen requires you to work with potentially dangerous clients, and often travel in hazardous environments.

Your administration does not recognize the magnitude of your risks. Their decisions and policies regarding your safety and training are very different from others who administrate parole and federal probation; officers who perform similar duties in the same environment. The level of the safety training and the lack of equipment necessary to perform the duties of a field officer are the result. By its actions, management indicates that field officers are in relatively little danger which could not be further from the truth.

I would like to hear from more officers and learn about the problems that you are experiencing in the field. Your local president should be advised of these circumstances so that they can get the information to me. Please fill out an Incident Report and mail it to the PANJ office.

ADDITIONAL BENEFITS OF MEMBERSHIP

by John Morton, Editor

With the help of Doehler and Associates, PANJ financial advisors, our members have access to certain benefits. These benefits are available to Active Members only (Those who pay 100% of annual dues). Judicial employees who are represented by PANJ but pay representation fees (85% of dues) are not eligible, but you may sign up as Active Members at any time. See any PANJ Representative for membership information or contact the PANJ office. The staff of our information center can be reached by phone at 732-223-1799.

Liberty Mutual Group Insurance:

Call 1-800-225-8285 for a competitive quote on auto and homeowner's insurance. Have your policies handy when you call. You must state that you are a **Member** of the Probation Association of New Jersey and our client number is **7057**.

Jos. A. Bank Clothier

Discounts on men's clothing at store locations. Code number is **6328**.

Senate Bill 949 (Bryant/Gormley)

by Robert Nixon, Princeton Public Affairs

Senate Bill 949 makes Division of Criminal Justice Investigators and Probation Officers eligible for grants through the Body Armor Replacement Fund. The legislation will therefore include Probation Officers among the thousands of State, county, and local law enforcement officers who are eligible for body armor grants.

The "Body Armor Replacement Fund" was established by the Legislature in 1997 in order to provide funds to law enforcement agencies to obtain and replace body armor every five years. The program is funded by an additional \$1.00 added to each motor vehicle fine issued in the State. The Division of State Police has established regulation for the issuance of body armor based upon urgency, need, and fund availability.

The Probation Association of New Jersey has played an important role in the movement of the legislation. Specifically, by actively lobbying and testifying in the Legislature on the bill, PANJ has successfully impressed upon legislators the safety needs of Probation Officers in the State. In addition, Princeton Public Affairs' legislative activity has further expanded PANJ's recognition by legislators in the public safety and crime debate.

The legislation was passed by the Senate on September 30 by a vote of 38-0. It must be reconsidered, along with Assembly Bill 2855, by the New Jersey General Assembly prior to the close of the Session on January 10, 2000.



PANJ Forms Partnership with New Jersey Conference of Mayors

by George Christie, President

On Saturday, September 25, 1999, the NJ conference of Mayors held its eighth annual Summit conference on the Maurice River in Cape May. This year's theme

concerned the youth of our state with a special emphasis on violence in the community and in the schools.

When the NJ Conference of Mayors formed their Special Task Force to address youth violence, Mayor James McGreevey made sure that PANJ would participate. As a result, we were able to submit a report which supported the concept of school based Probation Officers who would monitor their probationers more effectively and be available for at-risk students as well.

The Preliminary Action Plan put forth by the NU Conference of Mayors did cite a number of comments from the PANJ report. We will be looking forward to the final report to be distributed in the near future.

PANJ Represents YOU

by John Morton

PANJ has taken a very active role in representing the members of our bargaining units in their relationship with their employer. We take this task seriously, and we have the numbers to prove it. Since PANJ started its Legal Committee Database, we have represented Judicial employees in **over three hundred separate cases**. Some of these have had state-wide implications.

The Legal Committee is Chaired by Peter Tortoreto, and its members are George Christie, Peter Savage, Stuart Martinsen, Susan Ormsby-Cuzzo, Anne Dutton, John Mooney, Karen Morse, Deneen Hohman, and this writer. The committee takes this opportunity to thank its network of association representatives at the local level who put forth great effort to ensure that our members' rights are defended.

Don't forget to sign up for the PANJ Conference!!!!

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