EMPLOYMENT LAW360

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Wash. Supreme Court Throws Out Delay-Of-Pay Suit

By **Elaine Chow**, elaine.chow@portfoliomedia.com

Friday, Feb 15, 2008 --- Four corrections officers from Washington State had their case against Thurston County shut down on Thursday, after a state Supreme Court affirmed a lower court's decision to dismiss their wage-and-hour claims.

The four officers, Gene Champagne, Cary Brown, Roland Knorr and Christopher Scanlon, worked in the Thurston County's Sheriff's Office. They had brought the proposed class action in 2004 arguing that the prison's payroll system violated Washington's wage statutes.

The county pays its employees once a month on the last business day of each month for regular wages. Employees who have earned additional compensation – overtime pay, compensatory time, holiday pay and the like – would submit a form to the county at the end of the month. The county would then add the additional pay to the next month's paycheck.

The officers alleged that the separate payday for additional pay violated the state's Minimum Wage Act, Wage Payment Act and the Workplace Relations Act. They asked for twice the amount of the additional pay that had been held back, class certification and attorneys' fees and costs.

The county argued that the officers had failed to meet the “condition precedent” for the various claims, especially since the county's practice of giving additional pay the next month had been memorialized in a collective bargaining agreement with employees.

When the state court judge granted the county's motion for summary judgment, the officers took the case up to the state court of appeals. The appeals court affirmed the summary judgment, but did not reach the issue of whether wage-and-hour claims are subject to the conditions set forth in nonclaim statutes.

While the Washington Supreme Court disagreed with some of the interpretations of the court of appeals, it nevertheless found that the case against the county should be dismissed.

The court found that under the facts of the case, the officers' claims could not be supported since the county had paid all wages as outlined in the collective bargaining agreement. It also found that the MWA claims could not be asserted because the county had paid all the wages, even if they had been delayed, and that since the plaintiffs were current employees during the trial,

they could not bring claims under the WPA.

“The Supreme Court affirmed the dismissal of all of those claims. What the county was doing was exactly what was provided in the union contract,” said Douglas Smith of Littler Mendelson PC, attorney for Thurston County.

“It wasn't a case of an employer stringing employees along ... It's a significant victory for not just public employers but all employers in Washington State. Hopefully that'll bring some common sense and sanity back to the employment sphere,” he said.

Smith said that the verdict was important because it helped clarify Washington wage-and-hour law, holding that MWA could not be used when pay is delayed. It also helps stymie an emerging trend for employees to try and bring forth wage-and-hour class actions in an attempt to receive double damages on wages, he purported.

“Within the last five years, I would say there have probably been a dozen reported Supreme Court or Court of Appeals decisions in our state in wage-hour class actions. This type of case has absolutely mushroomed over the last five to 10 years,” he said.

“The Supreme Court has clarified the law on this type of lawsuit. Hopefully now, this particular breed will now die out,” he said.

Plaintiffs lawyers were not available for comment.

The plaintiffs are represented by Aitchison & Vick Inc.

Thurston County is represented in this matter by Littler Mendelson PC and Talmadge Law Group PLLC.

The case is Champagne v. Thurston County, case number 79209-7 in the Supreme Court of the State of Washington.