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EMPLOYMENT - NEW YORK

Botsford v. Berton

Supreme Court, Appellate Division, Third Department, New York - December 26, 2013 - N.Y.S.2d - 198 L.R.R.M. (BNA) 2007 - 2013 N.Y. Slip Op. 08575

Former fire inspector, who was also president of village's firefighters union, petitioned for Article 78 review of determination of village's mayor to terminate his employment.

The Supreme Court, Appellate Division held that:

- Inspector was not deprived of his rights under Civil Service Law, and
- Mayor should have been disqualified from reviewing hearing officer's recommendation.

Determination annulled and remitted.

Former fire inspector, who was also president of village's firefighters union, was not penalized for exercising his statutory right to hearing on underlying disciplinary charges, but rather for giving false testimony at that hearing, and thus he was not deprived of his rights under Civil Service Law. Village was entitled to take adverse action against inspector because he made false statements in response to underlying charge of misconduct, precluding argument that to permit initiation of perjury charges under such circumstances would coerce inspector into admitting misconduct, regardless of veracity of charges, in order to avoid more severe penalty.

In second disciplinary proceeding, village's mayor should have been disqualified from reviewing hearing officer's recommendation to terminate fire inspector. Mayor's decision in first disciplinary proceeding not only agreed with officer's report, but also stated his own opinion that "I do not believe [inspector's] account of what was said," and he later averred, in affidavit submitted in inspector's Article 78 proceeding, that he found inspector's version of events "incredible," and, while falsity of inspector's account was not at issue in second proceeding, central issue in second proceeding was whether inspector's false testimony was given knowingly and willingly, so that mayor was in position of determining inextricably intertwined question of whether inspector's statements were made knowingly and willfully.