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Pitzel v. Dinapoli

Supreme Court, Appellate Division, Third Department, New York - November 5, 2015 - N.Y.S.3d - 2015 WL 6741039 - 2015 N.Y. Slip Op. 08015

Retired police officer brought article 78 proceeding challenging determination of State Comptroller denying officer's application for recalculation of his final average salary. The Supreme Court, Albany County, transferred proceeding.

The Supreme Court, Appellate Division, held that substantial evidence supported determination that wages earned on special-duty details were properly excluded from officer's final average salary calculation.

Substantial evidence supported State Comptroller's determination that police officer did not provide service to police department while he was on special-duty details, as would preclude consideration of wages earned for those details in calculation of officer's final average salary for retirement purposes. Private entities paid police department so that officers would provide services to them on special-duty details, officer acknowledged that he volunteered to perform services on special-duty details, and there was no evidence that the department had ever ordered officer or his fellow officers to perform special-duty details.