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PUBLIC EMPLOYMENT - CALIFORNIA

Morgado v. City and County of San Francisco

Court of Appeal, First District, Division 4, California - August 26, 2020 - Cal.Rptr.3d - 2020 WL 5036169 - 20 Cal. Daily Op. Serv. 9076 - 2020 Daily Journal D.A.R. 9503

Non-probationary city police officer, whose employment was terminated following misconduct finding, brought action against city, seeking injunctive relief and writ of administrative mandate requiring reinstatement.

Trial court issued injunctive order requiring city to reinstate officer pending administrative appeal. City appealed. The Court of Appeal affirmed. After officer was reinstated but suspended without pay, officer moved to hold city in contempt for failure to comply with injunction, and trial court granted motion, ordering city to compensate officer with front pay and benefits lost and refrain from withholding pay and benefits. After city offset its payment to officer by the amount of side income officer earned after termination, officer moved for second order of contempt, and trial court granted motion. City applied for writ of mandate. The Court of Appeal issued writ, vacating second contempt order. The Superior Court, San found first contempt order did not permit city to deduct side income and ordered city to pay officer full amount deducted. City appealed.

The Court of Appeal held that:

- City could take deductions for side income from front pay as well as back pay owed to officer;
- Officer's side employment was incompatible with employment as officer; and
- Deductions city could take based on side income were limited to post-tax income retained by officer.

In order to make police officer whole, city could take deductions from front pay, not only back pay, that it owed to officer based on his side income, following orders requiring city to reinstate officer's employment pending administrative appeal of misconduct finding and to pay officer back pay and front pay; limiting deductions to back pay would result in taxpayer-subsidized windfall to officer.

Police department general order allowing police officers to engage in secondary employment with any necessary permission of chief of police and to retain all income earned thereby did not preclude city from setting off its payment of "make-whole" relief to officer, who was terminated from employment in violation of Public Safety Officers Procedural Bill of Rights Act, in the amount of side income officer would not have earned but for his termination; offset of "make-whole" relief would not prevent officer from retaining income he earned in side job.

Police officer's secondary employment as mortgage broker, which he performed after termination and during post-reinstatement period of suspension from work as officer, was incompatible with employment as officer, and, thus, city could deduct officer's side income from mortgage broker job from front and back pay it owed to officer as make-whole relief from improper termination and suspension; officer would not have been able to work as mortgage broker absent his termination and suspension from primary employment.

Deductions that city could take from payment of back pay and front pay it owed to police officer as make-whole relief from improper termination and suspension were limited to amount of post-tax income officer earned at secondary job, not pre-tax income; deducting entirety of secondary income from pay owed to officer would deprive officer of money he was properly owed and did not otherwise retain from secondary employment.