

# Public Safety Labor News

Index

January - December 1995

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| Fired Georgia deputy allowed to maintain free speech lawsuit against Sheriff.  | <i>Cooper v. Smith</i> , 855 F.Supp. 1276 (S.D.Ga. 1994)  | May       |
| Court upholds police officer's \$370,000 verdict against Chief.  | <i>Schnabel v. Tyler</i> , 646 A.2d 152 (Conn. 1994)  | June      |
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| <b>Collective Bargaining</b>   |   |           |
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| "Last chance agreement" for trooper violates collective bargaining law.                              | <i>Washington State Patrol Troopers' Association v. Washington State Patrol</i> , Decision 4757-A, PECB (Wash. PERC 1995)   | August    |
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| City of Buffalo not allowed to present proposals during collective bargaining.                       | <i>City of Buffalo and Buffalo Police Benevolent Association</i> (Eischen, 1995)(Unreported opinion; copies of opinion available from Labor Relations Information System)                 | October   |
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| Inclusive evidence not enough to overcome presumption that heart condition job-related.              | <i>Skae v. Regan</i> , 617 N.Y.S.2d 237 (A.D. 1994)   | August    |
| Firefighter with seizure disorder receives commercial driver's license.                              | Reported in <i>The Labor Beat</i> , published by Carroll, Burdick & McDonough (July, 1995)  | November  |
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| No right to in-person hearing in disability claim.   | <i>Calzerano v. Board of Trustees of the Police Pension Fund</i> , 877 F.Supp. 161 (S.D.N.Y. 1995)  | December  |
| <b>Discipline</b>  |   |           |
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| Court reverses discharge of firefighter who was denied four-day extension of leave of absence.       | <i>In re Eastbank Consolidated Special Service Fire Protection District</i> , 630 So.2d 286 (La.App. 1993)  | January   |
| Garrity protections result in no defense in indemnification.   | <i>University of Michigan</i> , 103 LA 401 (Daniel, 1994)   | August    |
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| Return of rottweiler merits only written reprimand.  | <i>City of San Antonio and San Antonio, Texas Police Officers' Association</i> , LAIG 4969 (King, 1994)   | April     |
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| Notorious Pennsylvania State Police case comes to a close.   | <i>Pennsylvania State Police v. Pennsylvania State Troopers' Association</i> , 17 NPER PA-26077 (Pa. 1995)  | July      |
| Profanity during grievance meeting not proper basis for discipline.                                  | <i>FOP Lodge 44 v. State Employee Relations Board</i> , 17 NPER OH-26219 (Ohio Ct.Comm. Pleas 1995)   | July      |

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| Defective door locks on car result in overturning of police officer's suspension.   | <i>City of San Antonio</i> , LAIG 5010 (Sherman, 1994)  | July      |
| City cannot accumulate several acts of misconduct and "bunch them" in disciplinary decision.                                | <i>City of Benton Harbor</i> , 103 LA 817 (Allen, 1994)   | September |
| Pennsylvania Civil Service Boards lack authority to modify disciplinary penalties for deputy sheriffs.                      | <i>Coon v. Civil Service Commission for Allegheny County</i> , 654 A.2d 241 (Pa.Cmwlt. 1995)                        | October   |
| Two beers at Monday night football gathering not a sufficient basis for demotion.   | <i>Smith v. Municipal Fire &amp; Police Civil Service Board of Eunice, Louisiana</i> , 649 So.2d 566 (La.App. 1994) | November  |
| Arbitrator concludes "rogue cop" should be indefinitely suspended for failing to disclose informant's name.                 | <i>City of Cleburn</i> , LAIG 5067 (Detwiler, 1994)   | November  |
| Double jeopardy prohibits imposition of suspension.   | <i>Metropolitan Dade County</i> , LAIG 5074 (Hoffman, 1995)   | December  |
| Officer found to have not intentionally stolen money order seized during search.  | <i>City of Philadelphia</i> , LAIG 5048 (Stone, 1994)   | December  |
| Detective guesses wrong on legality of arrest order; ten-day suspension warranted.  | <i>Port Authority of New York and New Jersey</i> , LAIG 5076 (Nicolau, 1995)  | December  |
| Police union's encouragement of equal discipline not racial bias.   | <i>City of Miami</i> , 16 NPER FL-25157 (Fla. PERC General Counsel, 1994)   | January   |
| Arbitrator reverses termination of officer who fired 22 times at fleeing suspect.   | <i>Portland Police Association and City of Portland</i> (Henner, 1995)  | August    |
| Indiana statute requires notice first, discharge later; not visa versa.   | <i>Howard v. Incorporated Town of North Judson</i> , 644 N.E.2d 592 (Ind.App. 1994)                                 | August    |
| Discharge for excessive use of force found to be abuse of discretion.   | <i>Kathan v. Civil Service Commission</i> (unpublished opinion) (Cal.App. 1995)                                     | November  |
| Maryland police officers entitled to disciplinary hearing when facts in dispute.  | <i>Reimer v. Robey</i> , Case No. 92-CA-19429 (Circuit Court, 1993) (unreported decision)                           | February  |
| Probationary deputy's election-eve bar room dispute results in discharge.   | <i>Heideman v. Wirsing</i> , 7 F.3d 659 (7th Cir. 1993)   | March     |
| "Affair of the hearts" costs police officer job.  | <i>Barker v. Kattelman</i> , 634 N.E.2d 241 (OhioApp. 1993)   | June      |
| Twenty warnings enough; officer fired for insubordination.  | <i>Lugo v. City of Newburgh</i> , 618 N.Y.S.2d 421 (A.D. 1994)  | July      |
| Employer has no duty to investigate disciplinary charges in right-to-work state.  | <i>Gause v. Doe</i> , 451 S.E.2d 408 (S.C.App. 1994)  | August    |
| A "last chance agreement" means what it says.   | <i>City of Stillwater</i> , 103 LA 685 (Neas, 1994)   | September |
| Corrections officer held to have knowledge of racial significance of burning crosses.                                       | <i>Orange County, New York and Correction Officers Benevolent Association</i> , LAIG 5050 (Simons, 1994)            | October   |
| Termination of fire chief does not violate principles of double jeopardy.   | <i>Gerstenberger v. City of Macedonia</i> , 646 N.E.2d 489 (OhioApp. 1994)  | October   |
| Race discrimination not basis for discharge of officers.  | <i>Murray v. City of Sapulpa</i> , 45 F.3d 1417 (10th Cir. 1995)  | December  |
| Texas police chief demoted after starting investigation of city council member has no property or liberty rights to job.    | <i>Schultea v. Wood</i> , 29 F.3d 1112 (5th Cir. 1994)  | May       |
| Suspension of fire captain requires due process.  | <i>Nichols v. City of Jackson</i> , 848 F.Supp. 718 (S.D.Miss. 1994)  | May       |
| <b>Discrimination</b>   |   |           |
| ADEA exemption clears House of Representatives.   | No case citation.   | May       |
| ADEA exemption still stalled in Congress.   | No case citation.   | November  |
| Ending of union president's release time ruled discriminatory.  | <i>City of Troy</i> , 17 NPER NY-14526 (N.Y. PERB ALJ 1995)   | July      |
| Norfolk, Virginia police officer successfully claims retaliation for filing EEOC complaints alleging racial discrimination. | <i>McClam v. City of Norfolk</i> , 877 F.Supp. 277 (E.D.Va. 1995)   | November  |
| City engages in anti-union bias.  | <i>City of Troy</i> , 17 NPER NY-14526 (N.Y. PERB ALJ 1995)   | November  |
| Decision of police chief to "get rid of" the union vice president reversed.   | <i>City of Hialeah Gardens</i> , LAIG 5017 (Sherman, 1994)  | July      |
| Discharge of Vermont trooper overturned on sexual discrimination, harassment basis.   | <i>Grievance of Deborah Butler</i> , No. 93-17 (Vt. LRB 1994) (unreported decision)                                 | February  |
| <b>Drug Testing</b>   |   |           |
| Court allows drug testing of EMT's; holds that remedy for illegal drug test should be money damages, not reinstatement.     | <i>Piroglu v. Coleman</i> , 25 F.3d 1098 (D.C. Cir. 1994)   | March     |
| Chain of custody problems with urine sample result in reversal of termination.  | <i>Blappert v. Department of Police</i> , 647 So.2d 1339 (La.App. 1994)   | July      |
| <b>Due Process</b>  |   |           |
| Sergeant forced into psychiatric retirement entitled to due process.  | <i>Coffran v. Board of Trustees of New York City Pension Fund</i> , 842 F.Supp. 723 (S.D.N.Y. 1994)                 | January   |
| Applicant has no due process rights.  | <i>Rennard v. Polk County</i> , 516 N.W.2d 822 (Iowa 1994)  | February  |
| Kansas fire chief has no property interest in job.  | <i>Farthing v. City of Shawnee, Kansas</i> , 39 F.3d 1131 (10th Cir. 1994)  | August    |
| Probationary police officer guesses wrong in showdown with department over medical fitness for duty.                        | <i>Kreckek v. Board of Police Commissioners</i> , 646 N.E.2d 1314 (Ill.App. 1995)                                   | October   |

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| Inadequate notice of disciplinary charges violates fire chief's due process rights.                                      | <i>Ritz v. Board of Fire Commissioners</i> , 622 N.Y.S.2d 830 (A.D. 1995)  | October   |
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| Texas police chief demoted after starting investigation of city council member has no property or liberty rights to job. | <i>Schultea v. Wood</i> , 29 F.3d 1112 (5th Cir. 1994)   | May       |
| Suspension of fire captain requires due process.   | <i>Nichols v. City of Jackson</i> , 848 F.Supp. 718 (S.D.Miss. 1994)   | May       |
| Discharge of MY-T-QUICK police officer who killed two pedestrians upheld.  | <i>Schwartz v. Brown</i> , 857 F.Supp. 291 (S.D.N.Y. 1994)   | May       |
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| <b>FLSA</b>  |  |           |
| Bomb squad members not entitled to compensation for on-call time.  | <i>Lurvey v. Metropolitan Dade County</i> , 870 F.Supp. 1570 (S.D.Fla. 1994)   | November  |
| Canine officers not entitled to compensation for driving time.   | <i>Reich v. New York City Transit Authority</i> , 45 F.3d 646 (2nd Cir. 1995)  | November  |
| Long acquiescence in unpaid briefing period does not waive claim for compensation.                                       | <i>Bartoszewski v. Village of Fox Lake</i> , 647 N.E.2d 591 (Ill.App. 1995)  | September |
| <b>Freedom Of Speech</b>   |  |           |
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| Detective's complaints about smoking not protected by First Amendment.   | <i>Smith v. Fruin</i> , 28 F.3d 646 (7th Cir. 1994)  | March     |
| Reading <i>Playboy</i> during off hours in the fire station: freedom of speech v. sexual harassment.                     | <i>Johnson v. County of Los Angeles</i> , Reported in <i>The Labor Beat</i> , published by Carroll, Burdick & McDonough (February, 1995) | June      |
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| Wearing of "white power" t-shirt on Martin Luther King Day not protected speech.   | <i>Lawrenz v. James</i> , 852 F.Supp. 986 (M.D.Fla. 1994)  | April     |
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| Vague contract plus negotiations history lead to dependent health coverage for retiree.                                  | <i>City of York, Pennsylvania and Fraternal Order of Police</i> , LAIG 5053 (Wolf, 1994)   | December  |
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| Firefighter paid missed overtime during military leave   | <i>Howe v. City of St. Cloud</i> , 515 N.W.2d 77 (Minn.App. 1994)  | June      |
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| <b>Past Practice</b>   |  |           |
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| <b>Pension &amp; Benefits</b>  |  |           |
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| New York City firefighter steps in animal feces; entitled to disability pension.                         | <i>Bridgwood v. Board of Trustees</i> , 612 N.Y.S.2d 621 (A.D. 1994)  | February  |
| Law restricting survivors benefits to spouses of deceased firefighters upheld.                           | <i>Arnold v. DRS</i> , 875 P.2d 665 (Wash.App. 1994)  | February  |
| Birth date for civil service purposes can be different from true birth date.                             | <i>Glynn v. Retirement Board</i> , 635 N.E.2d 823 (Ill.App. 1994)   | March     |
| Retiree did not change insurance plans in time to entitle widow to survivor's benefits.                  | <i>State ex rel. Solomon v. Board of Trustees</i> , 647 N.E.2d 486 (Ohio 1995)  | September |
| Arbitrator has authority to order refund of pension contributions to police.                             | <i>Borough of Dormont v. Dormont Borough Police Department</i> , 654 A.2d 69 (Pa.Cmwlt. 1995)                         | September |
| When is a widow not a widow?   | <i>Gonsalves v. City of West Haven</i> , 653 A.2d 156 (Conn. 1995)  | October   |
| <b>Personnel Issues</b>  |   |           |
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| <b>Police Officer Bill Of Rights</b>   |   |           |
| Maryland police officers entitled to disciplinary hearing when facts in dispute.                         | <i>Reimer v. Robey</i> , Case No. 92-CA-19429 (Circuit Court, 1993) (unreported decision)                             | February  |
| Bill of Rights does not prohibit increasing sanction after officer rejects initial disciplinary penalty. | <i>Blondell v. Baltimore City Police Department</i> , 655 A.2d 34 (Md.App. 1995)                                      | December  |
| Bill of Rights requires that disciplinary hearing committee make specific findings of fact.              | <i>In re Simoneau</i> , 652 A.2d 457 (R.I. 1995)  | December  |
| Bill of Rights requires specific findings of fact.   | <i>Dionne v. Jalette</i> , 641 A.2d 744 (R.I. 1994)   | May       |
| <b>Politics</b>  |   |           |
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| <b>Promotions</b>  |   |           |
| Failure to seek injunction bars relief in promotion case.  | <i>Scott v. Department of Civil Service</i> , 637 So.2d 1166 (La.App. 1994)   | February  |
| Georgia firefighter has no property interest in anticipated promotion.                                   | <i>Hunter v. City of Warner Robins</i> , 842 F.Supp. 1460 (M.D.Ga. 1994)  | March     |
| Promotional list cannot be extended, even by agreement.  | <i>Walls v. City of Philadelphia</i> , 646 A.2d 592 (Pa.Cmwlt. 1994)  | May       |
| Before suing for failure to promote, police officer must actually request promotion.                     | <i>Beard v. King County</i> , 889 P.2d 501 (Wash.App. 1995)   | October   |
| Promotional exam results cannot be recalculated after final eligibility list is posted.                  | <i>Appeals of Palazzolo, Lohr and Miller</i> , Howard County, Maryland Personnel Board (1994) (unreported decision)   | March     |
| No harm, no foul on errors in fire captain promotional examination.                                      | <i>County of Clark and International Association of Fire Fighters, Local 1908</i> , LAIG 5011 (Collins, 1994).        | August    |
| Court hearing promotional appeal declines to answer whether criminals hide on roofs.                     | <i>State ex rel. Brenders v. Hall</i> , 646 N.E.2d 822 (Ohio 1995)  | October   |
| Remedy for officers improperly removed from promotional list is to be allowed to take test again.        | <i>Trosky v. Civil Service Commission</i> , 652 A.2d 813 (1995)   | December  |
| <b>Regional Governments</b>  |   |           |
| Regional EMS authority unconstitutional bureaucratic freight train.                                      | <i>Specht v. City of Sioux Falls</i> , ___ S.D. ___ (1995) (copies available from Labor Relations Information System) | April     |
| <b>Residency Requirements</b>  |   |           |
| Ban on residency requirements upheld.  | <i>City of Ashland v. Ashland Fraternal Order of Police, No. 3, Inc.</i> , 888 S.W.2d 667 (Ky. 1994)                  | August    |
| <b>Resignations</b>  |   |           |
| Hanging Rock Chief not allowed to rescind resignation.   | <i>Davidson v. Hanging Rock</i> , 647 N.E.2d 527 (OhioApp. 1994)  | November  |
| <b>Right To Bear Arms</b>  |   |           |
| Weighmaster not allowed to carry a gun.  | <i>City of Novi, Michigan</i> , 103 LA 132 (Brown, 1994)  | December  |
| <b>Right To Privacy</b>  |   |           |
| Former FBI agent not entitled to names of informants.  | <i>Putnam v. United States Department of Justice</i> , 873 F.Supp. 705 (D.D.C. 1995)                                  | December  |
| Supreme Court rules addresses of federal employees off-limits to unions.                                 | <i>United States Department of Defense v. Federal Labor Relations Authority</i> , 114 S.Ct. 1006 (1994)               | January   |
| IRS employees required to answer questions about prior drug and alcohol use.                             | <i>National Treasury Employees Union v. Department of Treasury</i> , 25 F.3d 237 (5th Cir. 1994)                      | March     |

| DESCRIPTION   | CASE CITATION  | ISSUE     |
|---|--|-----------|
| <b>Sexual Harassment</b>  |  |           |
| Reading <i>Playboy</i> during off hours in the fire station: freedom of speech v. sexual harassment.    | <i>Johnson v. County of Los Angeles</i> , Reported in <i>The Labor Beat</i> , published by Carroll, Burdick & McDonough (February, 1995) | June      |
| Supervisor must know of sexual harassment complaint in order to retaliate against officer who filed it. | <i>Bedford v. South Eastern Pennsylvania Transit Authority</i> , 867 F.Supp. 288 (E.D.Pa. 1994)  | October   |
| <b>Staffing Levels</b>  |  |           |
| Michigan court of appeals decides complicated firefighter minimum staffing case.                        | <i>City of Detroit v. Detroit Fire Fighters Association</i> , 517 N.W.2d 240 (Mich.App. 1994)  | January   |
| <b>Termination</b>  |  |           |
| City allowed to fire at-will police officer who was charged with but not convicted of a crime.          | <i>Borschel v. City of Perry</i> , 512 N.W.2d 565 (Iowa 1994)  | January   |
| Fired Dallas police chief loses lawsuit against city.   | <i>Vines v. City of Dallas</i> , 851 F.Supp. 254 (N.D.Tex. 1994)   | February  |
| Bubba On Patrol II; court upholds firing of police chief.   | <i>Esposito v. Metro-North Commuter Railroad Co.</i> , 856 F.Supp. 799 (S.D.N.Y. 1994)   | May       |
| Court holds newly-elected Sheriff has right to fire entire department if he wishes.                     | <i>Williams v. Bagley</i> , 875 S.W.2d 808 (Tex.App. 1994)   | June      |
| <b>Unfair Labor Practices</b>   |  |           |
| No breach of duty of fair representation simply because member adversely affected.                      | <i>Rhames v. PBA</i> , 17 NPER FL-25265 (Fla. PERC 1994)   | April     |
| <b>Union Representation</b>   |  |           |
| Arbitrator settles internal union squabble over representation rights.                                  | <i>AFSCME v. International Union of Police Associations</i> , 103 LA 767 (Weiler, 1994)  | October   |
| <b>Vacations</b>  |  |           |
| Officer entitled to vacation credit for service with prior employer.                                    | <i>State ex rel. Hadsell v. Springfield Township</i> , 634 N.E.2d 1035 (OhioApp. 1994)   | April     |
| <b>Wages</b>  |  |           |
| Long acquiescence in unpaid briefing period does not waive claim for compensation.                      | <i>Bartoszewski v. Village of Fox Lake</i> , 647 N.E.2d 591 (Ill.App. 1995)  | September |
| Fire engineer's pay differential not based on top step.   | <i>Price v. City of Baton Rouge</i> , 637 So.2d 535 (La.App. 1994)   | February  |
| City obligated to pay officers for private details even though contractor failed to pay city for work.  | <i>Town of Winthrop, Massachusetts and International Brotherhood of Police Officers, Local 397</i> , LAIG 5006 (Higgins, 1994)           | September |
| <b>Workers' Compensation</b>  |  |           |
| Firefighter entitled to workers' compensation benefits for knee injury.                                 | <i>Mescall v. Board of Trustees</i> , 612 N.Y.S.2d 624 (A.D. 1994)   | May       |
| <b>Working Out Of Classification</b>  |  |           |
| No due process right to working out of classification pay.  | <i>Haskins v. Chattanooga</i> , 877 S.W.2d 267 (Tenn.App. 1993)  | January   |