



Montana Legislative Services Division
Legal Services Office

TO: State Administration and Veterans' Affairs Interim Committee

FROM: David S. Niss, Staff Attorney

RE: Litigation Report

DATE: September 22, 2009

I
Introduction

From time to time in the past, Committee staff has reported to the State Administration and Veterans' Affairs (SAVA) Interim Committee on the existence and status of litigation involving agencies over which the Committee has monitoring jurisdiction. This memo reports on the status of two cases involving the Public Employees' Retirement Board (PERB), Montana Police Protective Association v. PERB, First Judicial District Court for Lewis and Clark County, Cause No. BDV-2007-852 and Teichrow v. PERB, First Judicial District Court for Lewis and Clark County, Cause No. BDV-2006-474.

II
Discussion

A. Montana Police Protective Association v. PERB

In this case, the Montana Police Protective Association (MPPA), an association of Montana municipal police officers, all of whom are members of the Municipal Police Officers' Retirement System (MPORS) administered by the PERB, wanted certain redacted actuarial-type information from the PERB concerning its members. The MPPA requested this information so that MPPA's own actuary could determine whether it was beneficial for its members to participate in the MPORS Deferred Retirement Option Plan (DROP) (see sections 19-9-1201 through 19-2-1208, MCA). In making the request, the MPPA recommended that the requested information be redacted so that the information would not disclose identifying information for the account holders.

After three requests from the MPPA lawyer for the information and a request from the Governor that the PERB provide the requested information and settle their differences over disclosure of the information amicably, PERB refused the requests and was sued in the Lewis and Clark County District Court by the MPPA to force the release of the information. The District Court ruled that the information sought by the MPPA must be released pursuant to the constitutional right to know public information provided by Article II, section 9, of the Montana Constitution. The court ruled that because the MPPA was not looking for name-identifiable information and only wanted the

information to determine whether its members were advantaged or disadvantaged by the DROP program and because there was clear precedent from the Montana Supreme Court for the disclosure of the information sought by the MPPA, the demands of individual privacy under Article II, section 10, did not outweigh the merits of public disclosure under Article II, section 9, of the Montana Constitution. Pursuant to the Court's order, the parties entered into a stipulation for a protective order, which was subsequently issued by the District Court. The PERB legal staff informs that the information requested by the MPPA has been provided to it pursuant to the Court's orders and that the case has now been closed.

B. Teichrow v. PERB

In 2005, after the resignation of a long-serving executive director, the PERB hired a new Executive Director, Mr. Terry Teichrow, who had been a member of the PERB. The PERB was then sued by Governor Brian Schweitzer in Schweitzer v. PERB, First Judicial District Lewis and Clark County, Cause No. BDV-2005-800, who alleged that because Mr. Teichrow had been hired in an illegal secret meeting of the PERB, Mr. Teichrow's appointment as Executive Director was null and void because the Board had violated the public's right to know ensured by Article II, section 9, of the Montana Constitution and statutes governing open meetings. The PERB admitted some errors in the appointment process, and Mr. Teichrow's employment contract was voided by the Board. The Board then reopened the hiring process and appointed Ms. Roxanne Minnehan as its Executive Director. The Governor's civil action was then dismissed as moot.

After filing an administrative grievance with the PERB, Mr. Teichrow then sued the Board in 2006, alleging that he was wrongfully terminated as Executive Director of the PERB. The District Court held that the Wrongful Discharge From Employment Act (Title 39, chapter 2, part 9, MCA) applied and that the Board had "good cause" under the Act for its termination of Mr. Teichrow. That good cause was a legitimate concern by the PERB members that the Governor would prevail in his lawsuit against the Board and that it was therefore not prudent to expend public funds to contest the Governor's complaint. The District Court therefore ruled in favor of the Board on Mr. Teichrow's complaint by granting summary judgment for the Board.

Mr. Teichrow then appealed the decision of the District Court to the Montana Supreme Court. Rule 7 of the Supreme Court's Rules of Appellate Procedure requires that the parties to certain civil appeals to the Supreme Court, including Mr. Teichrow's appeal, engage in alternative dispute resolution (mediation) and provides that the mediation process is confidential. Confidential mediation was engaged in between the state and Mr. Teichrow, which resulted in a settlement in which the state purchased a \$33,000 annuity for Mr. Teichrow. This author has reviewed the file of the Risk Management and Tort Defense Division of the Department of Administration (DOA) in this case and found nothing in that file to indicate why the DOA felt it was necessary, after summary judgment in the case was granted to the State by Judge Sherlock, to pay

the plaintiff \$33,000 to end his appeal. A discussion on this topic with the Special Assistant Attorney General handling the matter on behalf of the DOA indicated that the reason for the money settlement was the same vagaries or unknowns attendant to appeal of any civil litigation and the costs to the state of defending the appeal.

III Conclusion

Court proceedings in both Montana Police Protective Association v. PERB and Teichrow v. PERB have now ended. During those proceedings, there were no issues raised as to the meaning or application of any statutes arising because of the language of those statutes and no other issue was raised requiring review by the Legislature. Committee staff therefore considers these two matters closed.

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