

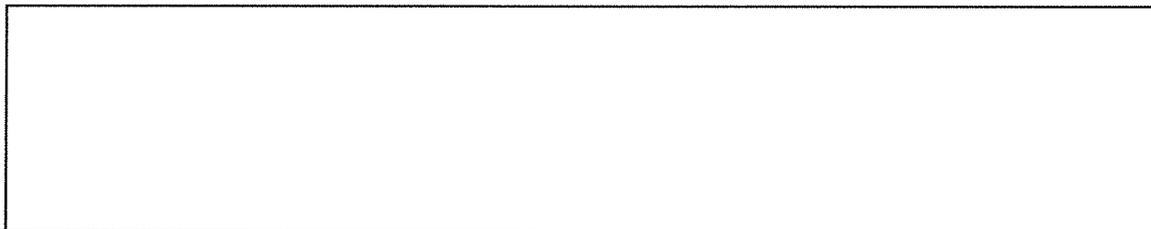
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Masser, Michelle

From: Lashway, Lisa
Sent: Wednesday, March 13, 2013 12:41 PM
To: Canning, Sean; Masser, Michelle
Subject: FW: Two court decisions of interest to municipalities

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From: NJLM to Municipal Officials [mailto:njlm-clerks@njslom.org]
Sent: Wednesday, March 13, 2013 12:18 PM
To: Lashway, Lisa
Subject: Two court decisions of interest to municipalities



Mayors Advisory

March 13, 2013

Re: Two court decisions of interest to municipalities

Dear Mayor:

I wanted to keep you updated on two recent court decisions that may be of interest to municipalities.

I. 612 Associates, LLC v. North Bergen Municipal Utilities Authority

In 612 Associates, LLC v. North Bergen Municipal Utilities Authority, the New Jersey Supreme Court sought to determine “which of two independent entities was entitled to collect a sewage connection fee where both entities played a role in the handling of the property’s sewage.”

612 Associates (612) constructed a condominium complex in Union City. Sewage from this complex would naturally flow toward the North Bergen Treatment Plant (North Bergen), rather than the North Hudson Regional Sewage Plant (North Hudson). 612 filed an application with North Bergen. However, since the complex was actually located in Union City, it was required to hook up to the North Hudson lines. Sewage from the complex would travel through the North Hudson lines for approximately 100 yards before it flowed into the North Bergen lines. Only about 5% of the total travel time for the sewage was in the North Hudson lines.

“A dispute arose between North Bergen MUA and North Hudson SA as to which authority was entitled to collect the statutorily-authorized connection fee. In claiming entitlement to the fee, North Hudson SA relied on the statute governing sewage authorities, N.J.S.A. 40:14A-8, and North Bergen MUA relied on the statute governing municipal utilities authorities, N.J.S.A. 40:14B-22.” 612 placed the fee in escrow until the matter was settled by the courts.

The case reached the Appellate Division. The Appellate Division decided that both entities were entitled to a connection fee and remanded the case to the trial court to make a determination as to apportionment. They also determined that the fee could not be duplicative; in other words, 612 paid the total cost into escrow and the two sewerage entities would divvy that up. 612 could not be required to pay both entities the full cost of the hookup.

The Supreme Court upheld the decision of the Appellate Division, finding “each sewerage authority that serves a property for the purpose of handling and treating sewage, whether through a direct or indirect connection, may charge a non-duplicative connection fee that reflects the use of its system and contributes toward its system’s cost.”

II. IMO City of Camden and International Association of Firefighters Local 788

This case is an appeal of an interest arbitration award between the City of Camden and the local firefighters union.

In the interest arbitration award, the arbitrator acknowledged that the city was unable to fund the award from its own tax base. Even so, the arbitrator awarded the union an 8.5 percent increase in base wages over four years and concluded that the state must provide funding for the city's Fire Department budget, including salary increases. In addition, the arbitrator delayed and attempted to limit the union's contributions to health insurance costs, contrary to N.J.S.A. 40A:10-21.1 and N.J.S.A. 40A:10-21(b).

On appeal, the Appellate Division held that the arbitrator exceeded his authority by requiring the state to fund the award. The Appellate Division found that the award was the product of "undue means," N.J.S.A. 2A:24-8(a), because it was contrary to statutory mandates governing employees' contributions toward their health benefits, N.J.S.A. 40A:10-21.1 and N.J.S.A. 40A:10-21(b). Further, the Appellate Division held that the arbitrator failed to give due consideration to the factors set forth in N.J.S.A. 34:13A-16(g) or adequately explain how each of the statutory criteria played into the determination of the final award, as required by N.J.S.A. 34:13A-16(f)(g). Due to the nature of the arbitrator's errors, the Appellate Division required that this matter be remanded and proceed before a different arbitrator.

We do not yet know the Local 788 will appeal this decision to the Supreme Court. We will keep you updated on any further developments.

We urge you to discuss the potential impact of these decisions with your municipal attorney and your labor counsel. If you have any questions, please contact Staff Attorney Matthew Weng at 609-695-3481 ext 137 or at mweng@njslom.com.

Very truly yours,
William G. Dressel, Jr.
Executive Director

*If you would like to be removed from receiving faxed advisories please contact Shirley Cade at scade@njslom.com or 609-695-3481 ext. 114 with the name of your municipality and fax number. Thank you.

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