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Separation of Powers, Court of Appeals, Cayuga-Onondaga Counties Bd. of Co-Op Educational Services v. Sweeney

COURT OF APPEALS

Cayuga-Onondaga Counties Bd. of Co-op Educational Services v. Sweeney[1]
(decided December 20, 1996)

Relying upon determinations adopted by John Sweeney, the Commissioner of Labor, the appellate division concluded that Cayuga-Onondaga Counties Board of Cooperative Education Services (hereinafter "BOCES"), violated Labor Law Section 220.[2] BOCES appealed on the grounds that the Commissioner of Labor lacked jurisdiction to make such determinations.[3] Specifically, BOCES claimed that (1) the Commissioner failed to make "a timely notice of claim against BOCES in compliance with Education Law Section 3813(1)"[4] and (2) the Notice of Hearing was served after the statute of limitations provided by Education Law Section 3813(2-b) expired.[5] The New York State

1. 89 N.Y.2d 395, 676 N.E.2d 854, 654 N.Y.S.2d 92 (1996).
2. *Id.* at 400, 676 N.E.2d at 855, 654 N.Y.S.2d at 94.
3. *Id.* at 400, 676 N.E.2d at 856, 654 N.Y.S.2d at 94.
4. *Id.*

N.Y. EDUC. LAW § 3813(1) (McKinney 1995). Section 3813(1) provides in pertinent part:

> No action or special proceeding . . . shall be prosecuted or maintained against any school district, board of education, board of cooperative educational services . . . unless it shall appear by and as an allegation in the complaint or necessary moving papers that a written verified claim upon which such action or special proceeding is founded was presented to the governing body of said district or school within three months after the accrual of such claim, and that the officer or body having the power to adjust or pay said claim has neglected or refused to make an adjustment or payment thereof for thirty days after such presentment.

Id.

5. *Cayuga*, 89 N.Y.2d at 400, 676 N.E.2d at 856, 654 N.Y.S.2d at 94.

N.Y. EDUC. LAW § 3813(2-b) (McKinney 1995). Section 3813(2-b) of the Education Law states in pertinent part:

> Except as provided in subdivision two of this section and, notwithstanding any other provision of law providing a longer period of time in which to commence an action or special proceeding, no action

Court of Appeals held that Section 3813 subdivisions (1) and (2-b) of the Education Law were not applicable, and affirmed the appellate division's order.[6]

In 1992, BOCES and Auburn City School District entered into an agreement in which BOCES agreed to provide laborers to replace the lighting system throughout the district, with a greater energy efficient system.[7] According to the agreement, BOCES would be reimbursed for the employees' wages, by the Auburn School District.[8] Forty-one full time employees of the Auburn School District were hired by BOCES.[9] Their BOCES pay rates were equivalent to the school district's pay rates.[10] However, as employees of BOCES, the individuals were "not compensated at overtime rates, which they would have received had they performed the work directly for the school district."[11]

Informal complaints concerning the pay differential, led to the filing of a formal complaint with the New York State Department of Labor.[12] In March of 1994, the Commissioner of Labor issued a Notice of Hearing to BOCES on allegations that BOCES violated New York Labor Law Section 220[13] by failing to pay the prevailing wages and supplements to the employees that had worked on the lighting project.[14] Following the hearing, the hearing officer made several findings that supported her conclusion that BOCES did in fact violate Section 220 of the Labor Law.[15]

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or special proceeding shall be commenced against any entity specified in subdivision one of this section more than one year after the cause of action arose . . . .

Id.

6. *Cayuga*, 89 N.Y.2d at 400, 676 N.E.2d at 856, 654 N.Y.S.2d at 94.
7. *Id.* at 399, 676 N.E.2d at 856, 654 N.Y.S.2d at 93.
8. *Id.*
9. *Id.*
10. *Id.*
11. *Id.*
12. *Id.*
13. N.Y. LABOR LAW § 220 (McKinney 1991). Section 220 provides for the hours, wages and supplements workers are to receive. *Id.*
14. *Cayuga*, 89 N.Y.2d at 399, 676 N.E.2d at 655, 654 N.Y.S.2d at 93.
15. *Id.* The hearing officer found that:

The hearing officer's report was adopted by the Commissioner of Labor and another hearing was ordered to determine: (1) the amount of underpayment; (2) any civil penalty; and (3) willfulness.[16] The Commissioner's determinations and order were confirmed by the appellate division.[17]

The New York State Court of Appeals rejected BOCES's argument that the Commissioner lacked jurisdiction due to his failure to comply with Education Law Section 3813.[18] The court explained that, in determining the applicability Section 3813(1), a distinction is drawn between proceedings based upon the relief sought.[19] In proceedings that "seek only enforcement of private rights and duties," the requirements of Section 3813(1) are applicable.[20] However, in proceedings that seek "to vindicate a public interest," the statutory provision is not applicable.[21] To demonstrate the distinction, the court discussed two cases.[22]

In *Union Free School District No. 6*,[23] the issue before the court concerned the validity of a personnel policy that "would single out childbirth among other physical conditions for special treatment in fixing terms of compensation and of return to employment thereafter."[24] A jurisdictional argument was raised,

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> [T]he arrangement between the Auburn City School District and BOCES was made to avoid the school district's liability for payment of overtime wages to its employees working on the project; that BOCES was acting in the capacity of a general contractor for the school district on the project; and that the type of work performed by the 41 BOCES employees was generally performed by electricians.

Id.

16. *Id.* at 400, 676 N.E.2d at 856, 654 N.Y.S.2d at 94.

17. *Id.*

18. *Id.*

19. *Id.*

20. *Id.* (quoting Union Free Sch. Dist. No. 6 of the Towns of Islip and Smithtown v. New York State Human Rights Appeal Bd., 35 N.Y.2d 371, 380, 320 N.E.2d 859, 862, 362 N.Y.S.2d 139, 145 (1974)).

21. *Id.*

22. *See, e.g., Union Free Sch. Dist.*, 35 N.Y.2d 371, 320 N.E.2d 859, 362 N.Y.S.2d 139 (1974); Mills v. County of Monroe, 59 N.Y.2d 307, 451 N.E.2d 456, 464 N.Y.S.2d 709 (1983).

23. 35 N.Y.2d 371, 320 N.E.2d 859, 362 N.Y.S.2d 139 (1974).

24. *Id.* at 378, 320 N.E.2d at 861, 362 N.Y.S.2d at 143.

similar to the one presented in *Cayuga-Onondaga*.[25] The appellants in *Union Free School District No. 6*, contended that the Division of Human Rights lacked jurisdiction due to the complainant's failure to comply with the notice of claim provision of Section 3813(1) of the Education Law.[26] The court rejected the contention and explained that the "proceeding was triggered by the complaint of this one teacher," but both the individual teacher and other similarly situated teachers, would benefit from the relief granted.[27] The court explained further "that advantages which accrue to these teachers . . . flow as an appropriate and intended consequence of the vindication by the division, acting on behalf of the public, of the public's interest in the elimination of discrimination based on sex . . . ."[28] Since the proceedings here sought to "vindicate a public interest," Education Law Section 3813(1) was not applicable.[29]

The case of *Mills v. County of Monroe*[30] involved proceedings that sought the enforcement of private rights and duties.[31] The plaintiff brought suit against the county alleging that the county had terminated her employment on the basis of her race and national origin.[32] In violation of the County Law Section 52, a notice of claim was never filed.[33] The court concluded that the "plaintiff's action was not brought to vindicate a public interest,"

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25. *Id.* at 379, 320 N.E.2d at 862, 362 N.Y.S.2d at 144.
26. *Id.*
27. *Id.* at 380, 320 N.E.2d at 863, 362 N.Y.S.2d at 145.
28. *Id.*
29. *Id.*
30. 59 N.Y.2d 307, 451 N.E.2d 456, 464 N.Y.S.2d 709 (1974).
31. *Id.*
32. *Id.* at 309, 451 N.E.2d at 456-57, 464 N.Y.S.2d at 709-10.
33. N.Y. COUNTY LAW § 52 (McKinney 1991). County Law § 52 provides:

> Any claim or notice of claim against a county for . . . must be made and served in compliance with section fifty-e of the general municipal law. Every action upon such claim shall be commenced pursuant to the provisions of section fifty-i of the general municipal law. The place of trial shall be in the county against which the action is brought.

Id.

but rather was "one seeking the enforcement of private rights."[34] Based on these conclusions, the court held that Section 52 of the County Law was applicable.[35]

The *Cayuga-Onondaga* court concluded that in accordance with the case of *Union Free School District No. 6*, the proceeding ordered by the Commissioner of Labor fell into the category of those seeking to vindicate a public interest.[36] First, the New York State Constitution mandates the prevailing wage requirement.[37] Secondly, the "content, structure and purpose" of the Labor Law Section 220 "has as its overriding goal the vindication of a public interest . . . ."[38]

The reasoning used to support the conclusion that subsection (1) of Section 3813 of the Education Law was inapplicable, was extended to subsection (2-b) as well.[39] Additionally, the court found that both subsections conflicted with various subdivisions of the New York Labor Law Section 220.[40]

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34. *Mills*, 59 N.Y.2d at 312, 451 N.E.2d at 458, 464 N.Y.S.2d at 711.

35. *Id.* at 308, 451 N.E.2d at 456, 464 N.Y.S.2d at 709 (holding that "[w]hen an employment discrimination action is brought against a county . . . the failure to timely file a notice of claim shall be fatal unless the action has been brought to vindicate a public interest or leave to serve late notice has been granted by the court"). *Id.*

36. *Cayuga*, 89 N.Y.2d at 400, 676 N.E.2d at 856, 654 N.Y.S.2d at 94.

37. N.Y. CONST. art. I. § 17. Section 17 provides in pertinent part:

> Labor of human beings is not a commodity nor an article of commerce and shall never be so considered or construed. No laborer, workman or mechanic, in the employ of a contractor or subcontractor engaged in the performance of any public work, shall be permitted to work more than eight hours in any day or more than five days in any week, except in cases of extraordinary emergency; nor shall he be paid less than the rate of wages prevailing in the same trade or occupation in the locality within the state where such public work is to be situated, erected or used.

Id.

38. *Cayuga*, 89 N.Y.2d at 401, 676 N.E.2d at 857, 654 N.Y.S.2d at 95. The court discussed "statutory procedures, powers and duties of the Commissioner and available remedies and sanctions under section 220 . . . ." *Id.* at 402, 654 N.Y.S.2d at 95.

39. *Id.* at 403-04, 676 N.E.2d at 858, 654 N.Y.S.2d at 96.

40. *Id.* at 404, 676 N.E.2d at 858, 654 N.Y.S.2d at 96. The court explained that "applying either the notice of claim or statute of limitations

The dissent argued that the action here was similar to the one brought in the case of *Mills v. Monroe County*.[41] For the dissenters, both cases involved an action to recover lost wages.[42] The majority's reliance on *Union Free School District No. 6*, was also criticized by the dissent.[43] Judge Ciparick distinguished the case and stated, "[i]n that case, unlike Mills or the instant case, plaintiff's action truly vindicated the important right to equal treatment in the workplace, which the court concluded would inure to the benefit of a similarly situated class . . . ."[44]

The majority responded by pointing out that the "dissent ignores the breadth of the statutory enforcement tools available to the commissioner . . . ."[45] Furthermore, the majority explained that notice of claim requirements have no relevance to actions brought under Labor Law Section 220 [8][46] and therefore they cannot "be applicable to the administrative enforcement proceedings upon which those actions depend."[47]

In sum, the state law in applying the statutory requirements provided in Education Law Section 3813, recognizes a line drawn between actions that seek to enforce private rights and duties and those that seek to vindicate a public interest. The difficulty arises when the court must label an action as one or the other.

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provisions of Education Law s 3813 to prevailing wage law enforcement proceedings would conflict with . . ." Labor Law §§ 220-b(2), 220 [8], 220-b[2] [f], 220-b[3]). *Id.* at 403, 654 N.Y.S.2d at 96.

41. *Id.* at 406-07, 676 N.E.2d at 859, 654 N.Y.S.2d at 97-98 (Ciparick, J., dissenting).

42. *Id.* (Ciparick, J., dissenting).

43. *Id.* (Ciparick, J., dissenting).

44. *Id.* at 407, 676 N.E.2d at 860, 654 N.Y.S.2d at 98 (Ciparick, J., dissenting).

45. *Id.* at 404, 676 N.E.2d at 858, 654 N.Y.S.2d at 96.

46. *See* Bucci v. Village of Port Chester, 22 N.Y.2d 195, 239 N.E.2d 335, 292 N.Y.S.2d 393 (1968) (holding that municipal notice of claims statutes have no "relevancy or application to actions brought pursuant to subdivision 8 of section 220"). *Id.* at 204, 239 N.E.2d at 339, 292 N.Y.S.2d at 399.

47. *Cayuga*, 89 N.Y.2d at 404, 676 N.E.2d at 858, 654 N.Y.S.2d at 96.