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SECOND DEPARTMENT

Briggs v. Stangl[252]
(decided December 29, 1995)

Petitioner, a subway car conductor for the New York City Transit Authority, brought an article 78 proceeding against respondents, the Transit Authority, to "vacate and annul a notice of termination" of his employment and to reinstate him to his position as a subway car conductor.[253] Petitioner claimed that his state[254] and federal[255] constitutional protection against illegal searches and seizures had been violated by the respondent's requirement that he submit to a "return-to-work drug test pursuant to a collective bargaining agreement" between the Transit Authority and his union.[256] The Appellate Division, Second Department, disagreed with the petitioner, stating that "[t]he constitutional rights of individual public employees represented by collective bargaining agents may be waived by the consent of those agents."[257] In addition, the court stated that the drug testing was reasonable, even in the absence of reasonable suspicion, in light of the fact that the petitioner's job was "safety sensitive."[258] Accordingly, the court affirmed the lower court's decision and dismissed the petitioner's claim.[259]

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252. 635 N.Y.S.2d 687 (App. Div. 2d Dep't 1995).

253. *Id.* at 687-88.

254. N.Y. CONST. art. I, § 12. This section provides in relevant part: "The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated . . . ." *Id.*

255. U.S. CONST. amend. IV. The Fourth Amendment provides in relevant part: "The right of the people to be secure in their persons, houses, papers and effects, against unreasonable searches and seizures, shall not be violated . . . ." *Id.*

256. *Briggs*, 635 N.Y.S.2d at 688.

257. *Id.* (citing Antinore v. State, 49 A.D.2d 6, 371 N.Y.S.2d 213 (2d Dep't 1975), *aff'd*, 40 N.Y.2d 921, 358 N.E.2d 268, 389 N.Y.S.2d 576 (1976)).

258. *Id.*

259. *Id.*

The court relied on *Antinore v. State of New York*[260] for the proposition that any decisions made by a union agent while acting on behalf of employees to a collective bargaining agreement are binding on the group of employees that the agent represents.[261] The court in *Antinore* stated that "the fact that [an employee] did not himself approve the agreement negotiated by his representative and now disclaims satisfaction with one aspect of the agreement makes it no less binding upon him."[262]

Thus, in the case at bar, the court held that it was constitutional for the respondent to require a return-to-work drug test because it was an agreed upon method of drug testing between the petitioner's union agent and the defendant.[263] In addition, the court stated that the fact that the petitioner's job is "safety sensitive" is grounds enough to test him for drug use regardless of what agreement, if any, had been made between his union agents and the respondents.[264]

The court relied on the case of *Caruso v. Ward*[265] for this proposition. In *Caruso,* the court discussed the possibility of performing drug testing on an individual without having reasonable suspicion and still remaining within the constitutional boundaries of the Fourth Amendment.[266] The New York Court of Appeals in *Caruso* stated that "random searches conducted by the State without reasonable suspicion are closely scrutinized, and generally only permitted when the *privacy interests* implicated are *minimal*, the government's interest is *substantial*, and *safeguards* are provided to insure that the individual's reasonable expectation of privacy is not subjected to *unregulated discretion.*"[267] Accordingly, the *Briggs* court decided that

260. 49 A.D.2d 6, 371 N.Y.S.2d 213 (2d Dep't 1975), *aff'd*, 40 N.Y.2d 921, 358 N.E.2d 268, 389 N.Y.S.2d 576 (1976).

261. *Id.* at 10-11, 371 N.Y.S.2d at 216-17.

262. *Id.* at 11, 371 N.Y.S.2d at 217.

263. *Briggs*, 635 N.Y.S.2d at 688.

264. *Id.*

265. 72 N.Y.2d 432, 530 N.E.2d 850, 534 N.Y.S.2d 142 (1987).

266. *Id.* at 437-39, 530 N.E.2d at 852-53, 534 N.Y.S.2d at 144-45.

267. *Id.* at 438, 530 N.E.2d at 853, 534 N.Y.S.2d at 154.

because the petitioner's job was "safety sensitive," the reasonable suspicion requirement could be circumvented.[268]

In conclusion, the *Briggs* court held that regardless of what the petitioner's personal beliefs were with regard to the return-to-work drug policy, the petitioner was required to adopt the position the agent had negotiated for his union.[269] Pursuant to the collective bargaining agreement between the two entities, it was agreed that the drug testing policy was permissible.[270] As a result,[271] the petitioner's right to be free from an unreasonable search pursuant to the Fourth Amendment was held not to be infringed. Thus, citing to the Federal Constitution, *Briggs* stands for the proposition that the New York State Constitution goes no further than federal constitutional doctrine in protecting employee's in "safety sensitive" jobs from drug testing.

People v. Owens[272]
(decided February 3, 1995)

The defendant, charged with criminal possession of a weapon,[273] moved to have evidence, specifically a gun and several statements made to the arresting police officers, suppressed.[274] The defendant argued that the evidence taken by the police officers was gained during a "pre-text stop" of defendant's vehicle, and as such, should not serve as a basis for seizure of the gun or defendant's subsequent statements to the police officers.[275] The court suppressed the evidence, holding

268. *Briggs*, 635 N.Y.S.2d at 688.
269. *Id.*
270. *Id.*
271. *Id.*
272. 164 Misc. 2d 15, 623 N.Y.S.2d 719 (Sup. Ct. New York County 1995).
273. *See* N.Y. CRIM. PROC. LAW § 265.02 (McKinney 1989). This section provides in pertinent part: "A person is guilty of criminal possession of a weapon in the third degree when: . . . (4) he possesses any loaded firearm." *Id.*
274. *Owens*, 164 Misc. 2d at 15-16, 623 N.Y.S.2d at 720.
275. *Id.* at 18, 623 N.Y.S.2d at 721.