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## Civil Service Appointments and Promotions

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# TOURO LAW REVIEW

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## NEW YORK STATE CONSTITUTIONAL DECISIONS: 1992 COMPILATION

### CIVIL SERVICE APPOINTMENTS AND PROMOTIONS

*N.Y. CONST. art. V, § 6:*

*Appointments and promotions in the civil service of the state and all of the civil divisions thereof, including cities and villages, shall be made according to merit and fitness to be ascertained as far as practicable, by examination which, as far as practicable, shall be competitive . . . .*

### SUPREME COURT, APPELLATE DIVISION

#### THIRD DEPARTMENT

James v. Broadnax<sup>19</sup>  
(decided April 2, 1992)

The petitioner, a State employee, appealed the dismissal of his Civil Practice Law & Rules (CPLR) article 78<sup>20</sup> petition seeking, *inter alia*, a reinstatement of his position as Director of Public Employee Training.<sup>21</sup> The petitioner contended that the replace-

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19. 182 A.D.2d 887, 581 N.Y.S.2d 900 (3rd Dep't 1992).

20. N.Y. CIV. PRAC. L. & R. § 7804 (McKinney 1992).

21. *Broadnax*, 182 A.D.2d at 887, 581 N.Y.S.2d at 901.

ment of "his competitive permanent position of director of training with that of noncompetitive project directors"<sup>22</sup> was done in bad faith in violation of N.Y. Constitution, article V, section 6.<sup>23</sup> The appellate division, third department, held that the petitioner failed to meet his burden of "demonstrating by credible evidence that his position was abolished 'in a bad faith effort to circumvent the Civil Service Law.'"<sup>24</sup> The respondent claimed that the petitioner's position was eliminated because of financial exigencies.<sup>25</sup>

The petitioner had argued that "his permanent position was improperly abolished because another person outside his title was appointed, not by reason of merit and fitness, to perform his former duties."<sup>26</sup>

In responding to the petitioner's allegations, the respondent submitted affidavits from various parties explaining that the abolition of the petitioner's position was done "in an effort to meet financial and staffing exigencies arising from the State budgetary crisis."<sup>27</sup> Further, the affidavits explained that the position of project director was not the same as the petitioner's position as director of training.<sup>28</sup> Therefore, no one was appointed to petitioner's former duties.

The supreme court held that the "petitioner failed to offer the requisite proof of bad faith while respondent established that the position was abolished in an effort to meet financial and staffing exigencies."<sup>29</sup> The court further held that the position of director of training and that of project director differed significantly.<sup>30</sup>

The appellate division failed to make a determination on the constitutional issue, rather, the court reaffirmed the supreme

22. *Id.*

23. N.Y. CONST. Art. V, § 6 (McKinney 1987).

24. *Broadnax*, 182 A.D.2d at 888, 581 N.Y.S.2d at 901 (quoting *Aldazabal v. Carey*, 44 N.Y.2d 787, 788, 377 N.E.2d 476, 477, 406 N.Y.S.2d 32, 33 (1978)).

25. *Id.* at 88-88, 581 N.Y.S.2d at 901.

26. *Id.* at 888, 581 N.Y.S.2d at 901.

27. *Id.* at 887-88, 581 N.Y.S.2d at 901.

28. *Id.* at 888, 581 N.Y.S.2d at 901.

29. *Id.* at 887, 581 N.Y.S.2d at 901.

30. *Id.* at 888, 581 N.Y.S.2d at 901.

court's ruling based on the fact that the petitioner's claim of bad faith lacked any credible evidence and was without merit.<sup>31</sup> Additionally, the court stated that "[t]he proof was also insufficient to establish that the position of project director was the same or similar to that of director of training."<sup>32</sup>

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31. *Id.*

32. *Id.*

