

COURTHOUSE NEWS

A Summary of Topical Highlights from decisions of the
U.S. District Court for the District of Oregon
A Court Publication Supported by the Attorney Admissions Fund
Vol. VII, No. 13, June 11, 2001

Environment

Several environmental organizations filed this action alleging claims under the National Environmental Policy Act concerning a proposed expansion of the Mt. Hood Meadows ski area. Judge King previously found a NEPA violation based on the Forest Service's failure to assess a reasonable alternative which would have allowed the expansion in numbers of skiers, but reduced the parking areas, thus requiring skiers to use other forms of transportation. Now, he decided to sever this issue from the rest of the Master Plan, only enjoining defendants from proceeding with any project at the ski area that has a direct material effect on parking facilities or that materially increases the presently approved parking load. Other aspects of the expansion may proceed.

Friends of Mt. Hood v. United States Forest Service, CV97-1787 (Opinion, June 4, 2001)
Plaintiffs' Counsel: Karl Anuta
Defense Counsel: Eric Gould,
Mark Nitzczynski, Per Ramfjord,
Richard Allan

Labor

A truck driver filed an action against his former employer and his Union alleging that he was terminated in violation of the terms of a Collective Bargaining Agreement (CBA) and that the Union breached its duty of fair representation when it failed to pursue a grievance against his employer.

Plaintiff drank beer the night before a scheduled run and arrived at work smelling of alcohol. His supervisor told plaintiff that he would have to undergo a urinalysis test before he would be permitted to drive. Plaintiff provided a sample which the tester determined was "off-temperature." The employer treated the test as adulterated and advised plaintiff that he could either resign or be fired. Plaintiff tendered his resignation and then pursued a grievance with his Union regarding the handling of his UA test.

Judge Dennis J. Hubel granted in part and denied in part a defense motion for summary judgment based upon a statute of limitations bar. The court held that the portion of plaintiff's claim that related to the

Union's handling of his grievance fell within the limitations period; a complaint regarding the events surrounding the testing itself were beyond the limitations period and, thus, barred.

The court granted the remainder of the defendants' summary judgment motions, finding that the Union's failure to process the grievance constituted an exercise of judgment and that there was no "egregious disregard," bad faith or discrimination in that processing. The court further held that because plaintiff could not sustain a fair representation claim against the Union, his claims against his former employer also failed. Barnes v. Line Drivers, et al., CV 00-578-HU (Opinion, 3/21/01).
Plaintiff's Counsel:

George Fisher
Defense Counsel: Paul Hays;
Kathy Peck

Constitutional Law

A.G.G. Enterprises, a refuse disposal and recycling business servicing commercial customers, wanted to expand its business into some of the local counties and

2 The Courthouse News

cities which divide their jurisdictions into exclusive franchises for garbage haulers. The division of A.G.G. at issue in this action picked up mixed solid waste from multiple customers, combined it into a packer truck, and took full loads to a material recovery facility which removed recyclable materials before transporting the residual waste to a landfill. The local governments want to enforce their ordinances which prohibit this activity by nonfranchised haulers. After a court trial, Judge King ruled against A.G.G. He concluded that this division of A.G.G. is neither a motor carrier nor a motor private carrier. Consequently, A.G.G.'s claim that the Federal Aviation Administration Authorization Act of 1994 preempted the local ordinances failed because the Act's preemption clause only applies to motor carriers and motor private carriers. The Commerce Clause claim failed because the indirect burden imposed upon interstate commerce, namely fewer recyclables entering the market, is not clearly excessive in relation to the local benefits provided by the franchise system. The Equal Protection claim failed for similar reasons. The franchise system has a rational relationship to the legitimate state interest of

providing service at a reasonable price to all customers, including remote ones, so that illegal dumping is reduced. Further, the franchises reduce traffic and noise resulting from multiple companies serving customers on one street several days a week. A.G.G. Enterprises, Inc. v. Washington County, et al., CV 00-1418-KI (Findings & Conclusions, May 29, 2001).

Plaintiff's Counsel:

Lawrence Davidson

Defense Counsel:

David Anderson

Intervenor's Counsel:

Barnes Ellis, G. Kevin Kiely

Collection

Last year, plaintiff obtained a judgment based upon a jury verdict and a court award of attorneys fees and costs. Unable to collect, plaintiff subsequently obtained a court order for a judgment debtor exam and learned that defendant transferred assets to several other individuals following entry of the judgment. Plaintiff filed a creditor's bill seeking to set aside the transfers and then filed a motion to amend his pleadings to add the property grantees as defendants.

Defendants opposed the motion to amend arguing that the federal court lacked jurisdiction over plaintiff's collection efforts.

Judge Robert E. Jones rejected the defense argument, noting that

although it could not impose liability for the underlying judgment on newly named defendants, it could entertain a supplemental proceeding to collect improperly transferred assets from individuals not part of the original action.

Jones v. Northwest Telemarketing, Inc., CV 99-990-JO (Opinion, March 6, 2001).

Plaintiff's Counsel:

Dana Pinney

Defense Counsel: John Weil;

Robert Lane Carey

Employment

A "no beard" policy constitutes a facially neutral grooming standard well within an employer's discretionary right to control employees' mode of appearance and does not violate Title VII's proscription against sex discrimination. The court granted a defense summary judgment motion dismissing the challenge, but declined to award defense attorney fees on grounds that the case was not "exceptional."

Barrett v. American Medical Response N.W. Inc., CV 00-1539-ST (Findings and Recommendation, Feb. 14, 2001; Adopted by Order of Judge Garr M. King, March, 2001).

Plaintiff's Counsel:

Glenn Solomon

Defense Counsel:

Melissa Rawlinson