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FIREFIGHTER INVOLVED IN SIGNIFICANT CASE DEALING WITH MANDATORY MEDICAL RELEASES

Robert Martin has been employed for over 34 years by the Fire and Rescue Department of the City of St. Petersburg, Florida. For the past 21 years, he has held the rank of lieutenant. The collective bargaining agreement between the City and Martin's labor organization, Local 747 of the International Association of Fire Fighters, requires employees to undergo an annual physical examination. For the past ten years, these annual physicals have been conducted by BayCare Occupational Health in St. Petersburg. Prior to 2008, Martin had always signed consent forms without reading them in taking his physical.

In 2008, BayCare changed its forms. The changes to the forms raised concerns among employees, including Martin.

In June 2008, Martin went to BayCare for his physical and was presented with the new forms to sign, which he did not want to do. Instead, he called the Fire Chief, who told him to return to work. A meeting between Local 747 and the City did not resolve the matter, and the Chief gave Martin a direct order to complete his physical examination.

On September 15, 2008, Martin returned to BayCare for his physical. Again he was presented new release forms. This time, Martin signed the forms, but only after deleting most of the text in the forms that either released BayCare from liability or allowed BayCare to disseminate his medical records. BayCare then refused to conduct the examination, and the City eventually suspended Martin for 30 days without pay for insubordination.

An arbitrator reversed the suspension. The Arbitrator began with the proposition that Florida law did not "favor" form releases of liability in favor of medical providers. Quoting from a general text, the Arbitrator found that "a release or exculpatory agreement purporting to relieve a hospital or a health care provider from liability generally is invalid on public policy grounds."

The Arbitrator also criticized the scope of the language of the release, commenting that the language was "so general that it is impossible to tell just who was released from liability: 'BayCare Occupational Health, employees, physicians and/or others.' If a phrase read something like 'BayCare, its employees, its physicians and/or other health care providers associated with it' then the exculpatory release might be reasonably delimited, but as it stands, it can be read to release anyone and everyone. It is, therefore, impermissibly vague and overbroad."

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The Arbitrator found that "although the collective bargaining agreement expressly authorizes the City to require physical examinations, nothing in the agreement authorizes the City to compel firefighters to sign an exculpatory contract as a condition precedent to undergoing the physical. This injustice is compounded by the fact that an exculpatory contract could impede an employee's right to sue by placing a hurdle in the way of suit for damages should he suffer injury from the tuberculosis test administered by BayCare."

The Arbitrator also sided with Martin's concerns over the confidentiality of his medical records. The Arbitrator found that the confidentiality of medical information was protected by Florida's constitution, and "the negligent release of confidential medical information is actionable. There are obvious ways that the confidentiality of Martin's medical records could be lost as a result of BayCare's negligence, even after BayCare releases them pursuant to authorization. BayCare could send them out in an inappropriate envelope, such as one having a transparent cellophane window through which information is revealed; BayCare might fail to seal even the best of envelopes; or BayCare might misaddress the envelope so that it falls into the wrong hands. As before, there is nothing in the collective bargaining agreement which authorizes the City to compel Martin to sign an exculpatory contract relieving BayCare from liability for negligence with respect to his medical records."

The City contended that without regard to the underlying legality of BayCare's forms, Martin had an obligation to "work now, grieve later." The Arbitrator disagreed, finding that there existed an exception to that general rule of insubordination where "management's orders are believed to be unlawful or unreasonable to the safe, orderly, and efficient operation of the organization." As the Arbitrator viewed it, "there are a number of perspectives from which it can be seen that Martin is not guilty of insubordination. The orders he stands accused of violating did not promote the safe, orderly, and efficient operation of the organization. To the contrary, they brought to a head a simmering, substantive dispute over BayCare's dubious forms. Under all of the circumstances, the orders were unreasonable."

St. Petersburg Firefighters Association, Local 747, FMCS No. 09-51731 (Cornelius, 2009). ◆