Human Resources Update: Name-Clearing Hearings
April 12, 2019

Remember Liberty Interests When Terminating Employees

(Cannon v. Village of Bald Head Island, 891 F.3d 489)

It is important to remember that North Carolina municipalities must comply with the 14th Amendment to the U.S. Constitution when terminating employees. The 14th Amendment dictates that "no state shall deprive any person of life, liberty, or property, without due process of law…" A procedural due process right is implicated when governmental action threatens a person's liberty interest in his reputation and choice of occupation.

Public employees are entitled to have a name-clearing hearing – or a chance dispute public accusations made against them in connection with termination or a serious demotion. A name-clearing hearing differs from the pre-dismissal conference that many municipalities already provide pursuant to their personnel policies. The name-clearing hearing allows the employee to invite members of the public to the hearing so that they can clear their name, publicly, regarding the allegations that have been made against them so that they are not stigmatized from obtaining future employment opportunities.

Under the recent holding in Cannon, the hearing must be offered prior to the dismissal letter becoming public, if it contains negative or stigmatizing information that could affect the employee's ability to obtain employment in the future. Since termination notices are public records pursuant to N.C.G.S. §160A-168, the dismissal letter could become a public as soon as it is placed into the personnel file. Towns should be aware that name-clearing hearings are part of due process for all public employees regardless of status including those that are considered probational employees.

In light of these requirements, Towns may want to consider providing employees subject to termination with the alleged policy violations in writing prior to the pre-dismissal conference. Additionally, the policy violations should be included in the pre-dismissal notice as opposed to publishing this information in the dismissal letter. This serves a two-fold purpose. First, it allows the employee to respond to the alleged policy violations at the pre-dismissal conference. Second, it can eliminate the need for a name-clearing hearing, if no negative or stigmatizing information regarding the adverse employment action has become public or could become public. Instead of stating the specific allegations of policy violations in the dismissal letter, the dismissal letter may simply reference the pre-dismissal conference (i.e. state that the employee is being terminated for the reasons discussed in the pre-dismissal conference). If no negative or stigmatizing information has been made public or could become public, no name-clearing hearing is required.

It should be noted that, if the terminated position is a sworn law enforcement officer and negative or stigmatizing language will be noted on the North Carolina Criminal Justice Standards "Form F-5B(LE)," specifically under the section requiring a "detailed description of reasons for investigation" the officer must be offered a name-clearing hearing prior to the form becoming public.

If you have questions about name-clearing hearing as part of due process, please reach out to Human Resource Consultants Heather James (hjames@nclm.org) or Hartwell Wright (hwright@nclm.org). Additionally, North Carolina League of Municipalities will be offering training at Garner Town Hall about the name-clearing hearing process for human resources professionals on June 18, 2019. Registration information will be sent in May and seating will be limited.