

Protecting the Rights of Arizona, California, Colorado, Michigan, Montana, Nevada, North Dakota, Oregon, Texas, Utah, Washington and Wyoming Public Safety Employees



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## LEGAL DEFENSE FUND News Articles

### COURT GRANTS TRO AGAINST DISCRIMINATORY SERGEANT'S EXAM

The San Luis Obispo POA and its leadership was granted a Temporary Restraining Order recently to prevent the department from approving, certifying, appointing or taking any further action to implement the certification and appointment of promotional candidates for the sergeant's classification. The TRO included as well, questioning, inquiring or otherwise discussing with police department employees their political and association affiliations, beliefs, opinions or support. Judge James Slater also ordered the department not to engage in any retaliatory harassing or punitive actions against any member of the San Luis Obispo POA for the exercise of their organizational, associational and individual freedoms of expression.

The Legal Defense Fund assisted the POA in this action based on LDF's long-standing commitment against retaliation for association activity. The dispute arises out of a police sergeant's promotional exam that asks, "What is your assessment of the relationship of the department management and the San Luis Obispo Police Officers Association?" Given the less than friendly relationship between the POA and the chief, this question was widely perceived as a provocation by the department.

The California Supreme Court has recognized that public employees have a right to engage in union activities without fear of reprisal or sanctions. See *Social Workers Union Local 535 v. Alameda County Welfare Department*, 11 Cal 3d 382 (1974). A well established rule of federal labor law prohibits employers from discriminating against employees for their union activities. See *Radio Officers v. National Labor Relations Board (A.H. Bull Steamship Company)*, 347 US 17 (1954).

California courts have followed this rule and prohibit discrimination against employees for their decision to join, participate and advocate on behalf of their union. See *Santa Clara County Council Attorneys Association v. Woodside*, 7 Cal 4(superscript: th) 525 (1994).

The California Supreme Court found that over the history of labor-management relations "the inherent threat to union activism posed by employer interrogation has been well documented." See *Social Workers*, 11 Cal 3d at 388, "scores of judicial decisions on both the state and federal levels, attest to the potentially coercive and intimidating effect of employer inquiries into an individual employees union activities." Id. citing *Petri Cleaners Inc. v. Automotive Employees*, 53 Cal 2d 455, 460 (1960).

The association argued that the sergeant's position is merely to oversee the day-to-day operations of police officers, direct training, identify crime patterns, and solicit input about departmental procedures. Thus, any inquiry about union activities does not relate to the job duties of a police sergeant and instead is directed at intimidating police officers from active participation in the union.

The Legal Defense Fund will continue to follow and report on this important case.

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