Commonwealth Court Allows Zoning Enforcement Officer to Bring Whistleblower Claim for Report Made as Part of Normal Job Duties

By Amanda J. MacDonald / Jun 30, 2015

On June 10, 2015, in Rohner v. Atkinson, the Commonwealth Court of Pennsylvania issued a decision allowing a Zoning Enforcement Officer's claim under the Pennsylvania Whistleblower Law to proceed against a Township. In so doing, the Commonwealth Court held that the Zoning Enforcement Officer could base his Whistleblower Law claim on a report made in the normal course of employment, such as reports of zoning violations.

The plaintiff, Wayne Rohner, was a Zoning Enforcement Officer whose job duties included inspecting construction projects and issuing reports to the Township. Mr. Rohner was assigned to inspect a school district's construction project for compliance with the zoning and building code. After issuing verbal and written reports to the Township about leaks in the roof and deviations from the school district's approved land development plan, Mr. Rohner refused to issue a certificate of compliance. Shortly thereafter, the Township suspended Mr. Rohner and replaced him with a third party inspector, who found that the school district's construction project complied with its approved plan and issued a certificate of compliance. The Township then terminated Mr. Rohner's employment. In response, Mr. Rohner filed a lawsuit against the Township, alleging, in part, that his discharge violated the Pennsylvania Whistleblower Law.

The Pennsylvania Whistleblower Law protects employees of public employers from discharge for making a good faith report to the employer of wrongdoing or waste by a public body. The law defines wrongdoing as “[a] violation which is not merely technical or minimal in nature of a Federal or State statute or regulation, of a political subdivision ordinance or regulation or of a code of conduct or ethics designed to protect the interest of the public or the employer.”

The issue before the Commonwealth Court was whether Mr. Rohner's report to the Township about the school district's violations of the Township's ordinance constitutes a report of wrongdoing under the state Whistleblower Law. The Commonwealth Court rejected the Township's argument that only reports of wrongdoing by the employer are entitled to protection under the law. The Commonwealth Court held that employees can base Whistleblower Law claims on reports of a violation of a statute that the employer is charged with enforcing for the benefit of the public. Because the Township is charged with enforcing the building code, the court found that Mr. Rohner's determination that there were code violations constitutes a report of wrongdoing under the Whistleblower Law.

On remand to the trial court, Mr. Rohner still must prove a causal connection between his report of the school district's code violations and his termination from employment. However, the Commonwealth Court's decision to allow the claim to proceed opens the door for similar claims against public employers in the future. Accordingly, public employers should proceed with caution when making employment decisions regarding employees charged with code enforcement, in light of the great deal of discretion afforded such employees. A public employer who disagrees with an employee's approval or disapproval of some aspect of its zoning and building code should consult legal counsel before taking any employment action. Failure to do so may subject the municipality to liability under Pennsylvania's Whistleblower Law.

If you have any questions about the Pennsylvania Whistleblower Law, you may contact Amanda J. MacDonald at (412) 394-2507 | amacdonald@clarkhill.com; Joe Rudolf at (215) 640-8410 | jrudolf@clarkhill.com; Erin C. Galbally at (215) 640-8510 | egalbally@clarkhill.com; Ethan Dennis at (215) 640-8427 | edennis@clarkhill.com; or a member of Clark Hill's Labor and Employment Practice Group.