NEW YORK CITY LAW DEPARTMENT
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APPEALS COURT UNANIMOUSLY UPHOLDS THE PRINCIPLE THAT THE MAYOR, CITY COMMISSIONERS AND CITY AGENCIES – NOT THE JUDICIARY – SHOULD DECIDE THE SIZE AND COMPOSITION OF THE CITY'S WORKFORCE

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New York, July 7, 2011 – Today, the Appellate Division, First Department, a midlevel State appellate court, reversed a lower trial court ruling and unanimously reaffirmed the principle that it is the Mayor, City commissioners and City agencies -- not the judiciary -- that should decide the proper size and composition of the City's workforce in the face of difficult budget constraints. The trial court decision, entered in September 2010, cost the City $1 million per month or $10 million total – money the City will never be able to recoup.

Declining to interfere with the New York City Health and Hospitals' (HHC's) staff management decisions, the Appellate Division reasoned in a 4-0 decision that, "By annulling HHC's layoff determination and mandating that it continue to employ workers identified for layoffs until it came up with a plan which passed judicial scrutiny, the court improperly inserted itself into the executive branch decision making by interfering with HHC's exercise of its statutory authority." (See page 24 of the decision.)

Justice John W. Sweeny, Jr. wrote the decision on behalf of the unanimous court. Justice Sweeny continued, "Neither the petitioners nor the courts should be permitted to substitute their judgment for the discretionary management of the public business by public officials, as neither have been lawfully charged with that responsibility." (See page 25.)

"This decision is extremely important," noted Corporation Counsel Michael A. Cardozo of the New York City Law Department, whose office litigated the case on behalf of HHC. "It makes clear that in these difficult budget times the personnel and layoff decisions made by the Executive Branch cannot be second-guessed by the judiciary."

Last September, HHC, after thoroughly reviewing its operations and its cost-cutting alternatives, concluded that among other cost-saving measures it would have to eliminate 144 positions in facilities maintenance across the HHC networks. HHC determined that the layoffs were necessary to preserve its ability to provide high-quality medical care to all New Yorkers who need it, regardless of ability to pay, in a safe environment. (Editor's Note: The layoffs were supposed to go into effect on Sept. 17, 2010 – thus a ten-month time frame.)

At the request of three labor unions, however, a trial court issued temporary restraining orders (TROs) preventing HHC from laying off three groups of employees: 45 of 136 employees in carpenter positions, 45 of 156 employees in electrician positions, and 54 of 104 employees in the Civil Service title of "laborer." After holding a hearing, the trial court concluded that HHC had used an improper methodology in reaching its layoff decision. The trial court then issued a permanent injunction (PI) prohibiting HHC from laying off the carpenters, electricians and laborers. HHC quickly appealed to the Appellate Division,

First Department. The Appellate Division consolidated the three cases for purposes of the appeal: *Dromm v. HHC* (carpenters), *Fitzpatrick v. HHC* (electricians), and *Roberts v. HHC* (laborers).

In today's decision, the Appellate Division vacated the trial court's order. "Inasmuch as the Legislature saw fit to give HHC the discretion to determine the number of nonmanagerial employees necessary to carry out is mission … HHC's decisions regarding staffing levels are beyond judicial review," the Court wrote. (See page 23.)

Accordingly, HHC is now free to carry out the layoffs initially scheduled for September 2010.

"Since these three cases began, the trial court's orders have cost HHC $1.1 million per month for ten months – over $10 million – a sum HHC can never recover," said Corporation Counsel Cardozo added. "As today's decision makes clear, judges must let municipal agencies and public benefit corporations carry out their responsibilities to make extremely difficult – but nonetheless lawful – managerial decisions. The separation of powers doctrine, as Justice Sweeney pointed out, demands no less."

As an alternative to its holding that the matter was not a proper one for judicial resolution, the Court said: "The record before us clearly shows that HHC's layoff decision was rational in light of the imperative to reduce costs in conjunction with it mandate to provide medical services to all." (See page 260.) The Court also noted, "There is nothing in this record which remotely demonstrates that HHC arrived at its decision in bad faith or without adequate facts or deliberation. In fact, the record demonstrates exactly the opposite." (See page 28.)

As to the petitioners' argument that the layoffs would violate regulations concerning staff and personnel safety and care, the Court stated that "this is far too speculative and hypothetical…." (see page 13) and this remained "wholly theoretical and unsubstantiated." (See page 15.)

The case was handled by Scott Shorr in the Law Department's Appeals Division, with assistance from Appeals' Alan Krams and Frank Caputo, and Labor & Employment Law's Eamonn Foley. Mr. Foley also litigated the lower court case, along with Pat Miller and Donna Canfield of the same division.

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