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Decertifying suit stripped down in U.S. court ruling

Ex-Aviation Department police officers challenge city decision to transfer status to security guards

BY DAVID THOMAS
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A federal judge on Tuesday tossed out half of the claims a group of Chicago aviation security officers raised in their class-action lawsuit against the city of Chicago and the state's Law Enforcement Training and Standards Board.

When the two governmental entities decertified the city's Aviation Department and its employees as no longer being a law enforcement agency, they also retroactively erased their work histories and demoted them from police officers to security guards, plaintiffs Keia Yates, Leonardo Rodriguez and Johnny Jimmerson allege.

The plaintiffs alleged claims of Fifth Amendment and due process rights violations against the city and state training board as well as fraudulent inducement and promissory estoppel.

U.S. District Judge Robert W. Gettleman dismissed the Fifth Amendment and fraudulent inducement claims against the city while discharging all claims against the state board.

John J. Scharkey III, a partner at Sweeney & Scharkey LLC and one of the plaintiffs' attorneys, said this was a great decision, adding that it was not uncommon for a judge to

reduce the number of claims plaintiffs initially file.

"We're looking at a case of first impression," said Robert D. Sweeney, also a partner at Sweeney & Scharkey LLC. "What the city did here no other municipality has tried to do before. We set forth claims we thought were viable, and Judge Gettleman agreed with us."

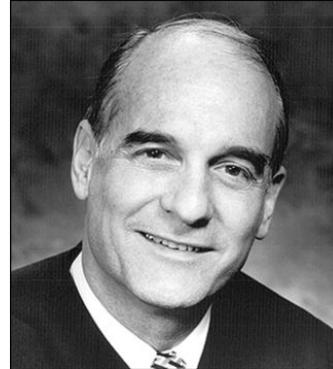
At the end of his ruling, Gettleman ordered an answer to be filed to the plaintiffs' remaining counts by Dec. 18. A status hearing is set for Jan. 9.

Gettleman dismissed the plaintiffs' Fifth Amendment claim because it didn't meet the definition of

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property under that provision — it covers only real and personal property. The plaintiffs' work history isn't property, in that regard.

Since 1993, the city's Aviation Department has been certified as a law enforcement agency with all the status and benefits that designation provided. As aviation



Robert W. Gettleman

security officers, Yates, Rodriguez and Jimmerson were tasked with a variety of security-related duties — like manning checkpoints and patrolling perimeters — at O'Hare International Airport and Midway International Airport.

The city and state training board's decision allegedly wiped out the plaintiffs' work histories, preventing them from transferring laterally to other law enforcement officer positions.

Their work histories could be considered as benefits for the plaintiffs that were allegedly wiped away by the city "without procedural due process," Gettleman wrote.

Gettleman found that the plaintiffs' fraudulent inducement claim

was flawed — they had to allege that the benefits the city offered up by working at the Aviation Department was a fraud from the beginning. This would contradict the other allegations in their complaint — that the plaintiffs were treated as law enforcement agents up until April 2017.

In April 2017, aviation police officers forcefully removed passenger David Dao from an overbooked United Airlines flight set to leave for Louisville, Ky., from O'Hare International Airport. Those officers — none of whom are involved in the current suit — have since been fired or reassigned, according to NPR and Associated Press reports from April 2018.

Video of the incident embroiled the airline and the Aviation Department in a global public relations nightmare. Dao settled with United by the end of April 2017 for an undisclosed amount; in the settlement, Dao released the city and aviation officers of all claims of liability.

Gettleman kept the plaintiffs' promissory estoppel claim intact. In order to keep that claim alive, they had to allege that the city affirmatively acted to make them aviation police officers — a finding Gettleman reached with relative ease.

Gettleman dismissed all the claims filed against the state defendants — the training board and its director — finding that it violated the 11th Amendment to pursue those claims against state actors in federal court.

Sweeney previously told the Daily Law Bulletin that the damages his clients were seeking would include "some measure of a lost year of law enforcement service." He said he did not believe Gettleman's dismissal of two of the claims would diminish those damages.

The city was represented by Tiffany S. Fordyce, Howard L. Mocerf and Monica S. Harris of Greenberg Traurig LLP. A spokesman for the city Law Department declined to comment.

The plaintiffs were also represented by Zachary M. Slavens of Sweeney & Scharkey.

The case is *Keia Yates, et al., v. State of Illinois, et al.*, No. 18 C 2613.

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