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Municipal Corporations—Prevailing Wage

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The Court does not answer the question as to whether an article 78 proceeding is necessary to vest the right to discontinued service or whether a mere denial by the Commissioner of Police would be sufficient. It is submitted that the latter would be sufficient if such denial were not supported by independent proof of misconduct. Since the *Obegfell* ruling creates an absolute vacancy there seems to be no need of a further proceeding to vest the right which petitioner claims. Such a proceeding would be indicative of good faith on the part of the ousted party but no more.

Prevailing Wage

The New York Constitution states that membership in any state pension system shall be a contractual relationship, benefits of which shall not be diminished or impaired.⁷ Being a contractual relationship an employee may agree that a cost of living bonus should not be considered as salary for purposes of computing his pension.⁸ In the absence of such agreement, the increased cost of living allowance must be regarded as compensation for purposes of computing a pension.⁹

In *Driesbach v. City of New York*,¹⁰ plaintiffs brought an action under section 220 of the Labor Law¹¹ to recover the difference between their basic salary and the prevailing wage. During the period in question plaintiffs received, in addition to their salary, a "cost of living" bonus which pursuant to a plan was to have no affect on their pension rights.¹² The plaintiffs argued that since the bonus had no affect on their pension rights they should be paid at the prevailing wage without regard to the bonus payments received during the period. The Court correctly denied this contention. The plaintiffs had agreed that the bonus should not be applied to compute the pension. Remuneration is income whether paid in the form of a bonus or salary so long as it is paid for the plaintiffs' services rendered. The bonus was received in part payment for the plaintiffs' work and should be offset against the prevailing wage.¹³

7. N. Y. CONST. art. V, §7 (1938).

8. *Carroll v. Grumet*, 281 App. Div. 35, 117 N. Y. S. 2d 553 (1st Dep't 1952), *leave to appeal denied*, 281 App. Div. 863 119 N. Y. S. 2d 922 (1st Dep't 1953), *appeal denied*, 305 N. Y. 692, 112 N. E. 2d 775 (1953).

9. *Lomax v. Matthews*, 201 Misc. 1054, 114 N. Y. S. 2d 682 (Co. Ct. 1951).

10. 1 N. Y. 2d 272, 135 N. E. 2d 32 (1956).

11. N. Y. LABOR LAW §220 3. The wages to be paid for a legal days work . . . shall not be less than prevailing rate of wages as hereinafter defined. . . .

12. See note 8 *supra*.

13. *Zuckerbrod v. Board of Higher Education of City of New York*, 278 App. Div. 822, 105 N. Y. S. 2d 410 (1st Dep't 1951), *appeal dismissed*, 302 N. Y. 942, 100 N. E. 2d 193 (1951).