

ANOTHER INSTALLMENT IN THE *GEORGE THE BARTENDER* SERIES

For past installments of the *George the Bartender* series, please visit our web site at <http://www.kttlaw.us/memos.html>

RE: GEORGE THE BARTENDER AND THE SCHOOL DISTRICT POLICE OFFICERS V. MUNICIPAL PEACE OFFICERS DEBATE OR THE SAFETY MEMBER PRESUMPTION PREDICAMENT ¹

FROM THE LOBBY BAR AT THE HYATT:

After an especially difficult day denying benefits I arrived at the Lobby Bar Thursday evening with two things on my mind. One was my cocktail of choice, a Beefeater's Martini, straight up with two olives; and the other was the enchantress that is Kim, the Hyatt's breathtakingly beautiful cocktail waitress.

Unfortunately, Kim was hosting what appeared to be a celebration of sorts going on at one end of the bar featuring a very ecstatic looking Ron Summers (much to my dismay), George the Bartender's worker's compensation attorney, and some other unfamiliar faces.

I therefore settled for second best and had George serve my usual and asked him what the deal was with the celebration.

George explained to me that Ron had just landed what was referred to by Ron as a huge "cash cow" account that promised to be very lucrative for him.

I looked down at the end of the bar again, stealing another furtive glance at Kim, and then focusing on Ron with his guests, who appeared to be some very distinguished looking gentlemen, made up my mind to get to the bottom of the cause of their celebration.

So, I ordered a round of cocktails from George for the group and made my way down to join in the merriment.

After receiving his drink Ron introduced me to his guests. These distinguished gentlemen turned out to be some of the executive officers for a "bargaining unit" representing police officers for the Los Amigos School District.²

¹ For those new patrons to the Lobby Bar, George the Bartender's workers' compensation case involves an injury to his elbow, lateral epicondylitis (tennis elbow), sustained from the repetitive serving of martinis to me. If there ever was an admitted industrial injury, this is it!

² It is illegal in the state of California for a school district or public entity to be represented by a union so to avoid this we call the union a "bargaining unit." The employers and their "bargaining units" cannot execute contracts so we call the contracts "memorandums of understanding (MOU)." So much for walking like a duck and quacking like a duck!

Ron happily told me that he had been asked by this “bargaining unit” to represent the Police Officers’ Association for the School District.

After what felt like forever, but actually was only an hour, the celebration wound down and Ron and I were alone. Ron then confided in me that this new client would be a source of much needed revenue for his firm.

After putting up with Ron’s revelry I knew this was going to be my big payoff moment so I asked him, “How so?”

Ron explained that police officers for school districts, like peace officers for municipalities, are entitled to the police officer or safety member presumptions, including heart, low back and cancer.

A big broad smile quickly came over my face as I realized I was about to rescue the coveted canary clenched in Ron’s greedy paw.

I gleefully advised Ron as to a recent decision by the Appeals Board in the case of *Jackie Thompson v. Los Angeles Unified School District* (ADJ6822166) filed on May 27, 2011.³

In this case the Board overturned a Findings and Award by the Workers’ Compensation Judge (WCJ) who ruled that police officers for school districts were similar to peace officers for municipalities.

In essence, the Board differentiated between the definition of a peace officer for a municipality pursuant to Penal Code §830.1(a) and a peace officer for a school district.

In overturning the decision of the WCJ, the Board stated in relevant part as follows:

As can be seen, the WCJ concluded that the presumption of industrial causation applies to applicant’s prostate cancer because Penal Code section 830.1(a), which is referenced in Labor Code section 3212.1 to define the extent of the industrial causation presumption, refers to police officers employed by a “district,” and defendant LAUSD is a School District. While the WCJ’s construction of the word “district” in Penal Code section 830.1(a) appears self evident, upon examination of the Legislature’s entire statutory scheme for defining the authority of peace officers, it is shown to be incorrect.

³ The Board’s panel decision in *Thompson* can be obtained by request via email. This fine decision was obtained by Preeti Shah, a shareholder in our Los Angeles office. This may or may not be appealed by the applicant’s attorney.

George the Bartender and the School District Police Officers v. Municipal Peace Officers or the Safety Member Presumption Predicament

July 14, 2011

Page 3

Explaining the difference between peace officers for municipalities as opposed to police officers for school districts the Board went on to note as follows:

The general law enforcement authority is in contrast to the many other peace officers defined in other sections of Chapter 4.5, whose jurisdiction is limited in his authority to carry firearms is expressly made subject to the terms and conditions specified by their employing agency.

The Board concluded as follows:

The provisions of Education Code section 38000 and Penal Code section 830.32 make clear that the authority of school district police officers to make arrests and carry firearms is limited, in contrast to the general law enforcement authority the Legislature granted peace officers defined by Penal Code section 830.1 . . . Because the Legislature did not include Penal Code section 830.32 peace officers within the presumption created by Labor Code section 3212.1, applicant is not entitled to the benefit of that presumption and the contrary finding of the WCJ is reversed.

DISCLAIMER:

All characters at the Lobby Bar are fictional as is this story. However, the ongoing intent to bring police officers for a school district under the same presumptions as afforded to peace officers for municipalities is not. The Board's panel decision in *Thompson* would appear to be a case of first impression.

Make mine a double, George.

-Joe Truce