

## Rule 'Human Rights' Wrong To Fire ALJ for Teaching

■ Fill-In Work on Days Off

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An Administrative Law Judge has won a grievance against his employer, the state Division of Human Rights, which tried to dismiss him after accusing him of teaching courses at Hunter College without permission.

Arbitrator Stuart M. Pohl found that while ALJ Robert Tuosto had taught two classes at Hunter College on a last-minute basis, covering for a friend, he was not guilty of any of the charges DHR leveled at him in its notice of discipline, which sought his dismissal.

### Claimed He Couldn't Be Trusted

ALJ Tuosto received the notice last December. It accused him of failing to obtain DHR approval to teach a class at Hunter College on March 27, 2008 for which he had been paid \$525, as well as lying to someone who inquired whether he would be teaching a class.

The state's lawyers held that ALJ Tuosto "can no longer be trusted to carry out his duties. . . in a fair and impartial manner" because of his insubordination. It pointed to evidence that he had also taught a class at Hunter College on March 9 and March 16, 2008.

But ALJ Tuosto countered that the DHR's information was not wholly accurate. While he had taught the March 9 and March 16 classes and been compensated with \$525, he said those were both instances when he was covering for a friend. Allegations that he was scheduled to begin teaching a class on education from March 27 onwards that year were simply untrue, he said.

His responses to DHR inquiries about his plans to teach, he said were true because they were given after he taught the two last-minute lessons in March, he said.

### Lawyer: Firing Excessive

"Even if the arbitrator concludes that [ALJ Tuosto] is guilty of some misconduct or insubordination, termination is an excessive penalty under all the circumstances," stated his lawyer, Daniel R. Bright, in the hearing.

Mr. Pohl agreed that "as far as the record reflects, ALJ Tuosto did not teach a class or course at Hunter College on March 27, 2008, nor did he ever teach a course or class at Hunter College in the fall semester." He also pointed out that the two last-minute classes ALJ Tuosto taught were on Sundays, and thus did not clash with his DHR work.

The arbitrator also criticized the state for penalizing an employee for teaching on a weekend, which that employee might not even know was against the rules. "If the state believes that the teaching of evening or weekend classes requires permission. . . all employees should be advised of that interpretation so they can act accordingly," he said.

ALJ Tuosto was found not guilty of all charges and had his grievance granted. The state was found not to have any cause for dismissing or disciplining him.