

SUPREME COURT OF NEW MEXICO

Perez v. N.M. Dep't of Workforce Solutions

Perez v. New Mexico Department of Workforce Solutions · No. No. 34,499; consolidated with No. 34,880 ·
Decided March 9, 2015

SUMMARY

The New Mexico Supreme Court consolidated appeals concerning whether three former state employees held major nontenured policy-making or advisory positions excluded from unemployment compensation benefits under NMSA 1978, Section 51-1-44(A)(5)(a). The Court held that the Legislature must expressly designate a position as a major nontenured policy-making or advisory position, and that the relevant positions had not been so designated. The Court therefore held that all three claimants were eligible for unemployment compensation benefits.

CASE DETAILS

COURT	Supreme Court of New Mexico
WRITING FOR THE COURT	Edward L. Chávez, Justice; Barbara J. Vigil, Chief Justice; Petra Jimenez Maes, Justice; Richard C. Bosson, Justice; Charles W. Daniels, Justice
JURISDICTION	New Mexico
DECIDED	March 9, 2015
DOCKET	No. 34,499; consolidated with No. 34,880
DISPOSITION	reversed
PROCEDURAL POSTURE	Original proceeding on certiorari in Perez and certification from the New Mexico Court of Appeals in the consolidated Griego and Hatch matters concerning denial of unemployment compensation benefits.
STANDARD OF REVIEW	The Supreme Court applies the same statutorily defined standard of review as the district court: an administrative decision may be reversed if the agency acted fraudulently, arbitrarily, or capriciously, if the decision lacks substantial evidence in the whole record, or if the agency failed to act in accordance with law. For statutory interpretation, the court reviews whether the decision was in accordance with law and may substitute its own interpretation for the agency's interpretation.
PRECEDENTIAL VALUE	Published opinion; binding New Mexico Supreme Court precedent.

PARTIES

Sandra K. Perez, Debra Griego, New Mexico Department of Workforce Solutions, New Mexico Racing Commission v. New Mexico Department of Workforce Solutions, New Mexico State Personnel Office, New Mexico Department of Finance and Administration, India Hatch

TOPICS

unemployment benefits statutory interpretation administrative law appellate procedure standard of review

PRACTICE AREAS

employment law unemployment benefits administrative law statutory interpretation

QUESTIONS PRESENTED

1. Whether Section 51-1-44(A)(5)(a) requires an express legislative designation of a state-government position as a major nontenured policy-making or advisory position before the position is excluded from unemployment compensation eligibility.
2. Whether exemption from the protections of the State Personnel Act establishes that a position is also a major nontenured policy-making or advisory position under the Unemployment Compensation Law.
3. Whether the statutory duties of the state personnel director demonstrated legislative intent to designate that position as a major nontenured policy-making or advisory position.
4. Whether Griego's and Hatch's positions, which had no statutory job descriptions identified by the court, were designated by the Legislature as major nontenured policy-making or advisory positions.

HOLDINGS

1. A state-government employee is ineligible for unemployment compensation under Section 51-1-44(A)(5)(a) only if the Legislature has expressly designated the position as both nontenured and either a major policy-making position or a major advisory position.
2. A position's exemption from the State Personnel Act establishes only that the position is nontenured; it does not establish that the position is a major policy-making or advisory position for purposes of Section 51-1-44(A)(5)(a).
3. The Legislature may designate a position as a major policy-making or advisory position by defining the position's statutory duties in a manner that demonstrates legislative intent to make the designation.
4. None of the three positions was designated by the Legislature as a major nontenured policy-making or advisory position; therefore, Perez, Griego, and Hatch were eligible for unemployment compensation benefits.

KEY QUOTATIONS

"We interpret this language to require the Legislature to expressly designate which nontenured positions are major policy-making or advisory positions." (§ 1)

“For an employee in a state government position to be ineligible for unemployment compensation benefits, legislation must expressly (1) designate that position as a nontenured position, and (2) designate the position as either a major policy-making position or a major advisory position.” (¶ 10)

“Section 51-1-44(A)(5)(a) grants the Legislature exclusive authority to designate which nontenured positions are major policy-making or advisory positions.” (¶ 27)

“As a result, we hold that Perez is also eligible for unemployment compensation.” (¶ 36)

FACTUAL BACKGROUND

Perez served as state personnel director, Griego served as administrative services division director and chief financial officer of the Department of Finance and Administration, and Hatch served as executive director of the New Mexico Racing Commission. All three were terminated after Governor Susana Martinez's first election and applied for unemployment compensation benefits. The Department ultimately determined that all three held major nontenured policy-making or advisory positions and denied benefits, although their positions differed in statutory descriptions and responsibilities.

PROCEDURAL HISTORY

The New Mexico Department of Workforce Solutions ultimately denied unemployment benefits to Perez, Griego, and Hatch on the ground that their former state-government positions were major nontenured policy-making or advisory positions under NMSA 1978, Section 51-1-44(A)(5)(a). Separate district courts reversed the Department's decisions in Perez and Hatch but affirmed the decision in Griego. The Court of Appeals reversed in Perez and reinstated the denial, while certifying the consolidated Griego and Hatch appeals. The New Mexico Supreme Court granted certiorari in Perez, accepted certification in Griego and Hatch, and consolidated the matters.

DISPOSITION

reversed

REMAND INSTRUCTIONS

The court reversed the Court of Appeals in Perez and reinstated the district court order granting Perez unemployment benefits; reversed the district court order affirming the denial of Griego's benefits; and affirmed the district court order granting Hatch benefits by reversing the Department's denial. No further remand instructions were stated.

CASES CITED

- Martinez v. N.M. State Eng'r Office, 2000-NMCA-074, ¶ 22, 129 N.M. 413, 9 P.3d 657
- N.M. Dep't of Workforce Solutions v. Perez, 2014-NMCA-035, ¶ 26, 320 P.3d 1001
- Miller v. Bd. of Cnty. Comm'rs of Santa Fe Cnty., 2008-NMCA-124, ¶ 16, 144 N.M. 841, 192 P.3d 1218
- Fitzhugh v. N.M. Dep't of Labor, Emp't Sec. Div., 1996-NMSC-044, ¶ 22, 122 N.M. 173, 922 P.2d 555
- Emp't Sec. Comm'n v. C. R. Davis Contracting Co., 1969-NMSC-174, ¶ 13, 81 N.M. 23, 462 P.2d 608

- Peisker v. Unemployment Comp. Comm'n, 1941-NMSC-031, ¶ 7, 45 N.M. 307, 115 P.2d 62
- Samosa v. Lopez, 1914-NMSC-061, ¶ 13, 19 N.M. 312, 142 P. 927
- N.M. Indus. Energy Consumers v. N.M. Pub. Regulation Comm'n, 2007-NMSC-053, ¶ 20, 142 N.M. 533, 168 P.3d 105
- State ex rel. Duran v. Anaya, 1985-NMSC-044, 102 N.M. 609, 698 P.2d 882
- Diamond v. Diamond, 2012-NMSC-022, ¶ 25, 283 P.3d 260
- Odatto v. Unemployment Comp. Bd. of Review, 805 A.2d 660, 662-63 (Pa. Commw. Ct. 2002)
- Mandel v. Unemployment Comp. Bd. of Review, No. 258 C.D. 2012, 2013 WL 3942184, at *2, *7 (Pa. Commw. Ct. Mar. 18, 2013)
- Griego v. Oliver, 2014-NMSC-003, ¶ 20, 316 P.3d 865
- State ex rel. Taylor v. Johnson, 1998-NMSC-015, ¶ 21, 125 N.M. 343, 961 P.2d 768
- Republican Party of N.M. v. N.M. Taxation & Revenue Dep't, 2012-NMSC-026, ¶ 46, 283 P.3d 853