



THE LDF REPORT



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Illegally obtained drug test results ordered sealed

On Feb. 13, 1997, Robert M. Wexler, of Silver, Hadden & Silver, argued in Superior Court that the Riverside Police Department had illegally ordered two of its officers to provide a urine sample following the death of a prisoner who was in the department's custody, and asked that the results of the drug test performed on those illegally obtained samples be kept from the department. The Superior Court agreed.

On Jan. 28, 1997, a Riverside police officer was in foot pursuit of a narcotics suspect. The officer eventually apprehended the suspect and a physical altercation ensued during which the officer requested assistance over his portable radio.

IN RESPONSE TO this request, additional law enforcement officers responded. Shortly thereafter, the suspect went into full cardiac arrest and all attempts by dispatched paramedic personnel to revive him were unsuccessful.

In the hours that followed, each of the officers who responded to the scene, whether they made contact with the suspect or not, were asked to make a voluntary statement to detectives conducting the criminal investigation of the incident.

At the conclusion of their respective interviews, each officer was asked to furnish a voluntary blood

or urine sample. Only three of the five officers provided voluntary samples; the other two refused.

Upon their refusal, the two officers were eventually ordered by the department to furnish a blood or urine sample or be subject to discipline, including possible termination. The purported authority upon which the department's order was premised was a 1996 version of Section 4.8 of their Policy and Procedure Manual.

AT THE TIME that the orders were given, attorney Wexler, who was present to represent the involved officers during the investigation, advised officials from the Police Department and a representative from the Riverside City Attorney's office that the order to provide a blood/urine sample was unlawful.

Wexler advised the city's officials that the department never met and conferred in good faith with the Riverside Police Officers' Association prior to adopting the 1996 policy.

MMBA provides that a public employer may not unilaterally alter a term or condition of employment that is within the scope of representation of an employee organization without first exhausting fully its statutory obligation to meet and confer in good faith with the recognized employee organization, includ-

ing participation in all applicable impasse procedures.

The department had negotiated with the association regarding the adoption of the predecessor, 1995 version of Section 4.8, but never consulted the association about the amendments contained in the 1996 version.

UNDER THE PROVISIONS of the 1995 policy, only an officer that discharged his/her firearm could be ordered to provide a blood or urine sample. In contrast, the unilaterally adopted 1996 policy expands the scope to provide that any employee may be properly subject to an order requiring a blood or urine sample.

On Feb. 10, 1997, after several attempts to persuade the city to destroy the illegally obtained urine samples, the decision was made to seek injunctive relief. Attorneys Wexler and Kenneth Yuwiler worked through the night to file the necessary paperwork in order to obtain a Temporary Restraining Order against the City of Riverside and its police chief, Kenneth Fortier.

In court, Wexler stressed the illegality of the department's conduct and the irreparable harm that

Continued from page 14

would occur to the two officers' careers if the department were permitted access to the illegal results. Judge Stephen D. Cunnison granted the request for a Temporary Restraining Order and ordered that the test results be sealed and turned over to him as soon as they are completed.

On March 5, Judge Cunnison will decide whether to keep the blood test results under seal or whether the department's brass will be given access to them.

The Riverside Police Officers' Association issued a press release following the judge's decision, in which it made clear its concern and support for the safety of all citizens of Riverside and its support for the highest professional standards of its members.

The association was troubled, however, by the department's knowing disregard of its members' constitutional and statutory rights and urged that future investigations be undertaken within a framework that acknowledges and respects those rights.

According to Wexler, the department is not prohibited from conducting a thorough and complete investigation of any incident. He cautions, however, that such investigations must respect the constitutional rights of all citizens, including police officers.

Continued on following page