

UPDATED

# NJ Whistle-blower Law Doesn't Apply to Port Authority

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Port Authority - 42nd Street and 8th Avenue

Rick Kopstein

A former employee of the Port Authority of New York and New Jersey, allegedly fired after reporting misconduct by a high-ranking police officer, cannot sue the agency for violating New Jersey's whistleblower law, a judge has ruled.

Hudson County Superior Court Judge Lisa Rose dismissed the lawsuit, filed by plaintiff Jay Alpert, saying that because New York's whistleblower law is not identical or similar to New Jersey's, the Port Authority cannot be subject to a single state's law.

"[N]either creator state may unilaterally impose additional duties, powers or responsibility upon a bi-state agency," Rose said in dismissing the lawsuit on summary judgment. Permitting the bistate agency to be subject to differing laws, she said, would "lead to discord."

Rose issued her ruling in *Alpert v. Port Authority of New York and New Jersey* on May 8. It was released May 26.

Alpert was the director of the Port Authority's Office of Emergency Management when, on April 11, 2012, he alleged that Port Authority Police Capt. John Ferrigno was taking photographs of promotional exams and conducting training classes for prospective candidates, according to Rose's opinion.

Alpert reported the alleged misconduct to his supervisor, David Wildstein, a political appointee of Republican New Jersey Gov. Chris Christie who at the time was the Port Authority's director of interstate projects, Rose said.

Wildstein last month pleaded guilty in federal court to charges relating to his role in orchestrating the closure of local access lanes to the George Washington Bridge in September 2013. The closures were allegedly retaliation against Democratic Fort Lee Mayor Mark Sokolich, who declined to join with other Democratic mayors in endorsing Christie for re-election in 2013.

Alpert was fired in September 2012. He filed a lawsuit alleging that the Port Authority violated his rights under the Conscientious Employee Protection Act, N.J.S.A. 34:19-3.

Rose agreed with the Port Authority that the lawsuit should not be allowed to proceed because CEPA is not analogous to the New York whistleblower statute, N.Y. CLS Labor §740.

"[T]he whistleblower laws of both New York and New Jersey are not substantially similar, complementary or parallel and, as such, they reflect that the goals of the overriding schemes of each state are different," Rose said. "Therefore, the Port Authority is not subject to CEPA."

Alpert's attorney, Robert Woodruff, said the ruling was not completely unexpected.

"Under the current status of the law, they're immune," said Woodruff, who runs a firm in Morristown. "The two states don't address whistleblower laws in the same fashion. CEPA is supposed to be remedial, but where's the remedy for this plaintiff?"

Woodruff said no decision has been made as to whether the ruling will be appealed.

Steve Coleman, the Port Authority's acting director of media relations, declined to comment on the ruling.

In December, Christie and Democratic New York Gov. Andrew Cuomo jointly vetoed bipartisan legislation aimed at reforming the operations of the Port Authority. One of those reforms would have strengthened protections for whistleblowers by making it illegal to fire or retaliate against any employee who reports misconduct.

Woodruff said it was unclear whether those reforms, had they been enacted, would have helped Alpert's case since statutes generally do not apply retroactively.

"This is indicative of why the Port Authority reform bills were so important then and continue to be important," said one of the reform package's prime sponsors, Assemblywoman Valerie Vainieri Huttle, D-Bergen.

In her ruling, Rose said New Jersey's laws could apply to the Port Authority if the interstate compact creating the agency allowed for that, if New Jersey and New York's laws are complementary or parallel, or if the Port Authority had agreed to comply with a single state's laws.

Woodruff argued that the differences between the two states' whistleblower statutes were insignificant because the Port Authority requires employees to report misconduct and purportedly has policies in place to protect those employees.

Rose acknowledged that the statutes do have some similarities: they apply to both public and private employers and have one-year statutes of limitations.

But, she added, there are clear differences. For example, New Jersey's whistleblower law covers a wider range of activities than New York's, she said. Also, a whistleblower in New Jersey need only have a reasonable belief that misconduct has occurred while in New York there must be an actual violation of a law, regulation or rule. Additionally, the New York law requires there to be proof of actual and substantial present danger to the public's health or safety.

New Jersey's law allows for punitive damages while New York's does not, Rose said, and New Jersey's law permits a trial by jury while New York's mandates a bench trial.

"[P]laintiff is barred from pursuing statutory CEPA claims against a bi-state agency because its compact does not authorize unilateral action, the legislation of both states is not complementary or parallel, and the Port Authority has not impliedly consented to the exercise of single-state jurisdiction," Rose said.

Alpert's former boss, Wildstein, has pleaded guilty to one count each of conspiracy to misapply Port Authority property and conspiracy against civil rights in connection with the lane closures. Wildstein has been cooperating with prosecutors.

Two other Christie allies, Bridget Kelly, his former deputy chief of staff, and Bill Baroni, the former deputy executive director at the Port Authority, have been charged by a federal grand jury with conspiring to misuse Port Authority property, commit wire fraud and deprive others of their civil rights in connection with the lane closures. They have pleaded not guilty.