



**STATE OF NEW JERSEY  
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**MEMORANDUM**

**TO:** Commissioners

**FROM:** Ira W. Mintz  
General Counsel

**SUBJECT:** Monthly Report on Developments in the Counsel's Office Since June 25, 2009

Commission Case

The Appellate Division has affirmed the Commission's decision in Manalapan-Englishtown Regional Bd. of Ed., P.E.R.C. No. 2007-42, 33 NJPER 3 (¶3 2007), aff'd NJPER (¶ App. Div. 2009). In that decision, the Commission denied the Board's request for a restraint of binding arbitration of a grievance filed by the Manalapan-Englishtown Education Association. The grievance contested the salary guide placement of a teaching staff member who returned to work following a disability leave. The Commission held that an employee's placement on a negotiated salary guide is normally mandatorily negotiable. The Commission stated that the parties' conflicting arguments about whether the contract provided credit for prior teaching experience could be made to the arbitrator. In the same decision, the Court also affirmed a trial court decision confirming the arbitrator's award. The arbitrator had placed the returning teacher on the top step of the salary guide after finding an established policy of granting returning teachers salary guide credit for prior experience.

Appeal Board Case

The Appellate Division has affirmed a decision of the Public Employment Relations Commission Appeal Board that had required Teamsters Local 97 to refund \$300 of the sums

deducted by the Teaneck Board of Education from Petitioner Michael Jacobs's pay as representation fees in lieu of dues. Jacobs and Teamsters Local 97, A.B.D. No. 2008-1, 34 NJPER 142 (¶60 2008). Modifying the recommended decision of an Administrative Law Judge, the PERC Appeal Board ordered that the representation fee assessed on a Teaneck Board of Education employee for the 2005 and 2006 calendar years be reduced from 85 per cent of membership dues to 70 per cent. The Appeal Board held that the hearing record contained no competent evidence establishing the portion of "per capita taxes" (fees paid to the International Union) that were chargeable to non-members paying representation fees. The Appeal Board concluded that Local 97 had not met its burden of proof and ordered that Jacob's pro rata share of "per capita taxes" and "Teamsters clothing," a member-only benefit, be refunded.

#### Other Cases

In Stengart v. Loving Care Agency, Inc., \_\_\_ N.J. Super. \_\_\_ (App. Div. 2009), the Appellate Division addressed whether workplace regulations converted an employee's emails with her attorney -- sent through the employee's personal, password-protected, web-based email account, but via her employer's computer -- into the employer's property. Finding that the policies undergirding the attorney-client privilege substantially outweigh the employer's interest in enforcement of its unilaterally imposed regulation, the Court rejected the employer's claimed right to rummage through and retain the employee's emails to her attorney. The Court also stated that questions concerning the applicability of the employer's policy to this employee should not have been resolved by the trial court by resort only to the parties' competing certifications.

In Guard Publishing Co. v. NLRB, 186 LRRM 2897, D.C. Cir., No. 07-1528, 7/7/09, the U.S. Court of Appeals for the District of Columbia Circuit ruled that the Guard Publishing Co. violated the Labor Management Relations Act by disciplining a copy editor who also was president of the union local for sending three union-related e-mails to her fellow employees' work e-mail addresses and by prohibiting a circulation employee from displaying union insignia. The NLRB had found that the company discriminatorily enforced the communication systems policy against the union president and illegally enforced an overly broad policy on union insignia with respect to the other employee. But based on a distinction between individual solicitation and solicitation for groups, the NLRB found that the company had legally disciplined the president for her two other e-mails. The Court affirmed the NLRB's rulings regarding the company's discipline of the president for her first e-mail and its actions regarding the other employee. However, the Court also found that the NLRB's rationale for finding the president's other discipline lawful was a "post hoc invention" that was not derived from the company's policy or from the warnings it issued to the president.

In Frank v. Old Bridge Tp., App. Div. Dkt. No. A-3163-07 (7/31/09), the Appellate Division granted summary judgment for the Township and found that N.J.S.A. 40A:14-154 did not permit "special compensation" because workplace or job-related stress was not an "injury" and plaintiff did not suffer a "permanent disability" from an injury much less one related to the duties of a police officer. The officer had claimed that he was entitled to the receipt of the

contractual long-term disability benefits "without consideration of the prescriptions of N.J.S.A. 40A:14-154 as determined by the PERC. See Old Bridge Tp., P.E.R.C. No. 98-53, 23 NJPER 622 (28301 1997) (long term disability insurance must be applied within the limitations of N.J.S.A. 40A:14-154).

In In re Vacation Leave Entitlement, Vineland City School Dist., App. Div. Dkt. No. A-3029-07 (7/22/09), the Appellate Division held that N.J.S.A. 11A:6-3, a statute providing for vacation time for local government Civil Service employees, does not require that vacation time be front loaded where employees receive their annual allotment at the beginning of the year. The Court rejected the argument that local government employees should be treated the same as State employees who, by regulation, have front-loaded vacation leave.

In Nardello v. Voorhees Tp., App Div. Dkt. No. A-0605-06 (7/8/09), the Appellate Division reinstated a \$500,000 jury verdict in a case alleging various acts of retaliation in violation of the Conscientious Employee Protection Act, N.J.S.A. 34:19-1 to -18. The Court also reinstated allegations against the police chief and ordered a trial on those allegations.