



**STATE OF NEW JERSEY
PUBLIC EMPLOYMENT RELATIONS COMMISSION**

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M E M O

To: Commissioners

From: Don Horowitz, Deputy General Counsel

Re: Developments in the Counsel's Office Since June 29, 2000

Commission Cases

The appeal taken by the employer in *Clinton Tp. and P.B.A. Local 329, P.E.R.C. No. 2000-3, 25 NJPER 365* (§30157 1999), *recon. den. P.E.R.C. No. 2000-37, 26 NJPER 15* (§31002 1999), *app. pending App. Div. Dkt No. A-002208-99T2*, a scope of negotiations case arising from interest arbitration, is being withdrawn. The interest arbitration case has been settled.

Other Cases

Two different Appellate Division panels issued unpublished decisions reviewing grievance arbitration awards.

In *State of N.J. and Local 195, IFPTE, App. Div. Dkt. No. A-6309-98T1 (6/19/2000)* (copy attached), Judges Kimmelman, Ciancia and Arnold set aside an arbitrator's award which directed that compensation be paid to three unit employees whose overtime opportunities were improperly given to a non-unit supervisor. The Court accepted the arbitrator's finding that the State violated its negotiated agreement with Local 195 by not giving the work to the three employees. But the Judges held the award of overtime compensation violated a common-law "no-work, no-pay" principle it deemed to still be applicable to public employees. The case is unpublished and may be at odds with other cases allowing employees who are passed over for overtime to seek cash compensation through binding arbitration. *See, Tp. of Wayne and AFSCME Council 52, Local 2274, P.E.R.C. No.97-74, 23 NJPER 42* (§28029 1996), *aff'd 24 NJPER 141* (§29071App. Div. 1998).

Local 195 is seeking review of the decision by the Supreme Court.

In *PBA Local 240, Monmouth County Correction Officers Association v. Monmouth County Sheriff and Monmouth County Board of Freeholders*, App Div. Dkt No. A-5826-98T1 (6/19/200) (copy attached), the Court upheld an arbitration award finding the employer had violated a

past practice when it changed a practice concerning the imposition of fines in lieu of suspensions as a disciplinary penalty. Judges Petrella and Conley held that a past practices clause could be relied upon by the arbitrator to sustain the grievance even though the policy alleged to have been changed was not expressly spelled out in the agreement. The Court held the arbitrator's findings were "reasonably debatable" and therefore should be upheld. It noted that its holding was "without prejudice" to the employer's ability to petition the Commission for a scope of negotiations determination "in the future."