



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

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May 24, 2001

MEMORANDUM

TO: Commissioners

FROM: Bob Anderson

RE: Report on Developments in the Counsel's Office Since April 26, 2001

Commission Cases

The Appellate Division has affirmed the Commission's decision in Hudson Cty. v. AFSCME Council 52, Locals 1697 and 2306, P.E.R.C. No. 2000-53, 26 NJPER 71 (¶31026 2000)(copy attached). The Commission declined to restrain binding arbitration of grievances asserting that the County violated the parties' collective negotiations agreement when it changed certain prescription drug benefits. The Court agreed with the Commission that the State Health Benefits Program did not preempt enforcement of the alleged agreement to provide the prescription drug benefit.

Other Cases

Pursuant to the Instruction governing labor relations between the Port Authority and its labor unions, the Port Authority's Employment Relations Panel may request the services of the Commission's General Counsel in appeals from its decisions. Such a request has been made in an appeal filed in New Jersey Superior Court in a case involving the shifting of unit work at a JFK facility. In another Port Authority case involving the shifting of unit work at the World Trade Center, Don Horowitz has filed a motion to dismiss an appeal filed in the trial division of the New Jersey Superior Court instead of a New York court. In the alternative, the motion asks that the appeal be transferred to the Appellate Division.

The Appellate Division has invalidated a statute entitling duly authorized representatives of various labor organizations to receive a paid leave of absence to attend union conventions.

New Jersey State FMBA v. North Hudson Reg. Fire & Rescue, App. Div. Dkt. No. A-3827-99T1 (5/15/01). The Court holds that the statute is unconstitutional because it constitutes special legislation and delegates legislative authority unduly; it also suggests in dictum that the statute may provide an illegal gift of public monies. The opinion suggests that the issue of paid leave to attend union conventions “might be dealt with by collective negotiations, subject to the inherent managerial prerogative of the public employer.” (Slip opinion at 21)

The Appellate Division has held that County freeholders may terminate the County Counsel despite the three-year term of office set by N.J.S.A. 40A:9-43 and the protection against an unjust discharge granted by N.J.S.A. 40A:9-25. Coyle v. Warren Cty. Freeholders Bd., App. Div. Dkt. No. A-3026-00T2 (5/3/01). Overruling Pillsbury v. Monmouth Cty., 140 N.J. Super. 410 (App. Div. 1976), the Court holds that the Supreme Court’s Rules of Professional Conduct govern the attorney-client relationship; require a lawyer to withdraw from representation when discharged (RPC 1:16); and override the statutes setting the term of office and requiring cause for discharge.

The New Jersey Supreme Court has held that the statutes of limitations in a CEPA case and in a fraud case begin to run on the date when an employee is actually discharged, not on the date the employee is told that he or she will be discharged. Alderiso v. Medical Center of Ocean Cty., ___ N.J. ___ (2001); Holmin v. TRW, Inc., ___ N.J. ___ (2001), aff’g o.b. 330 N.J. Super. 30 (App. Div. 2000). In determining the statute of limitations under New Jersey statutes, the Court declines to follow the analysis and holdings of the United States Supreme Court in determining the statute of limitations under federal statutes. The federal cases hold that the statute of limitations begins to run when an employee is told that he or she will be separated from employment as of a certain date — e.g. an assistant professor being told that she has been denied tenure and will have to leave a college after a terminal contract expires. The New Jersey Supreme Court also holds that the date of discharge does not include any subsequent date on which severance, health, or other extended benefits are paid.

In Baldassare v. State of New Jersey and Bergen Cty. Prosecutor, __ F.3d __ (3d Cir. 2001), the Third Circuit Court of Appeals held that Baldassare, the former Acting Chief of Investigators, could maintain an action against the Bergen County Prosecutor asserting that his dismissal violated his First Amendment

rights. Baldassare asserted that he was dismissed for his role in an internal investigation that resulted in criminal and administrative charges being brought against two employees for buying previously leased county vehicles well below market price. The lower court held that Baldassare's role in the investigation was not constitutionally protected, but the Third Circuit reversed that ruling. The case was remanded for trial on the merits of Baldassare's allegations and the respondents' competing assertions that Baldassare was discharged for poor job performance and insubordination.

The United States Supreme Court has reversed a Court of Appeals decision vacating an

arbitration award. Major League Baseball Players Ass'n v. Garvey, __ U.S. __ (2001). The arbitration panel rejected Garvey's claim that he had been denied a new contract due to the owners' collusion. The Court of Appeals rejected the arbitrator's findings and conclusions as "inexplicable and border(ing) on the irrational." It ordered the district court to enter an order remanding the case to the arbitration panel with instructions to rule for Garvey. The United States Supreme Court, in turn, summarily reversed that order. It reaffirmed the longstanding principle that appellate courts are not to consider the merits or equities of a contractual claim. So long as an arbitrator is honestly applying the contract, the Court must accept that application even if it is silly or improvident.