



STATE OF NEW JERSEY
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September 19, 2001

MEMORANDUM

TO: Commissioners

FROM: Bob Anderson
General Counsel

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

Commission Appeals

Attached is an Appellate Division affirmance of Camden Cty. Sheriff and PBA Local No. 277, P.E.R.C. No. 2000-25, 25 NJPER 431 (¶30190 1999), clarified P.E.R.C. 2000-72, 26 NJPER 172 (¶31069 2000), aff'd App. Div. Dkt. No. A-1509-99T5 (9/4/01). The case involves the negotiability of three successor contract proposals. The Commission held that the first two proposals were mandatorily negotiable to the extent they allowed sheriff's officers to contest minor disciplinary determinations, but not to the extent they would have allowed officers to contest major disciplinary determinations. The Commission held that the third proposal was mandatorily negotiable to the extent it permitted employees to bid for shift assignments based on their seniority and college credits where other qualifications were equal; but not to the extent that management had shown that certain positions required special skills, training, and qualifications. The Commission's opinions are comprehensive and the Court's affirmance is correspondingly short.

An Appellate Division panel has affirmed Somerset Cty. Sheriff v. PBA Local No. 177, Somerset Cty. Corrections Officers, P.E.R.C. No. 2000-20, 25 NJPER 419 (¶30182 1999), recon. den. P.E.R.C. No. 2000-38, 26 NJPER 16 (¶31003 1999), aff'd, App. Div. Dkt. No. A-1635-99T5 (8/29/01) (copy attached). The Commission held that grievances contesting the denial of the shift bids of female corrections officers were legally arbitrable. A New Jersey statute entitled the employer to have at least one female officer on every shift, but it did not have a prerogative to deny shift bids so that it could have more than one female officer on a shift.

An appeal has been filed in Tinton Falls Bd. of Ed. and Tinton Falls Ed. Ass'n., P.E.R.C. No. 2001-78, 27 NJPER 293 (¶32107 2001). The Commission dismissed an unfair practice charge contesting the termination of a non-tenured teacher.

An Appellate Division panel heard oral argument on September 11, 2001 in State-Operated School Dist. of the City of Newark and City Ass'n of Supervisors and Administrators, AFSA/AFL-CIO, Local 20, P.E.R.C. No. 2000-51, 26 NJPER 66 (¶31024 1999) and P.E.R.C. No. 2001-10, 26 NJPER 368 (¶31149 2000). The Commission resolved several scope-of-negotiations issues arising during successor contract negotiations. An appeal and cross-appeal were filed.

Other Cases

In Grasser v. United Healthcare Corp., _____ N.J. Super. _____ (App. Div. 2001), an Appellate Division panel held that a discharged employee was not compelled to arbitrate his LAD claim. The Court declined to find a knowing waiver of the right to sue in court based on the fact that the plaintiff had signed an employee handbook acknowledgment in which he agreed to be bound by the arbitration procedures in the employer's "Employment Arbitration Policy." That policy was summarized in that handbook. While language in the handbook might have sufficed to constitute a waiver, the employee did not sign the handbook.

In Daniels v. The Mutual Ins. Co., 340 N.J. Super. 11 (App. Div. 2001), the Appellate Division held that the statute of limitations on a CEPA action based on an alleged constructive discharge begins on the date the resignation is tendered rather than on the last date of actual employment. The Court dismissed the action as time-barred.

In Villalobos v. Fava, 342 N.J. Super. 38 (App. Div. 2001), the Court held that CEPA's statute of limitations barred an action by a former employee of a county prosecutor's office. The Court rejected the plaintiff's claim that the discovery rule applicable to claims under the Tort Claims Act also applied to this CEPA claim. It also rejected plaintiff's claim that the Prosecutor was equitably barred from invoking the statute of limitations.

In Jansen v. Solomon Smith Barney, Inc., 342 N.J. Super. 254 (App. Div. 2001), an Appellate Division panel held that putative beneficiaries of a deceased father's retirement accounts were bound to arbitrate their claim against their father's financial advisors. The Court relies on the well-settled public policy favoring arbitration, a policy developed in labor relations cases and applied in commercial law cases like this one. Among the principles cited by the Court are these:

- An arbitration agreement should be read liberally to find arbitrability if reasonably possible; any doubts concerning the scope of arbitrable issues should be resolved in favor of arbitration; and the arbitrability of a claim depends not upon the characterization of the claim, but upon the relationship of the claim to the subject matter of the arbitration clause.

In Bankston v. Newark Housing Auth., 342 N.J. Super. 465 (App. Div. 2001), a public housing tenant worked in a pre-apprentice title in an on-the-job training program run by the Housing Authority. She claimed she was entitled to higher compensation under the Prevailing Wage Act and under the collective negotiations agreement covering Authority employees. The Court rejected both claims. The Prevailing Wage Act covers only employees of contractors and not direct employees of public agencies. The collective negotiations agreement did not cover the employee's pre-apprentice title.

Statutes

The Acting Governor has signed two bills into law. Senate bill 1758 requires negotiations and a written agreement before any changes can be made to the State employee compensation plan. Senate bill 1790 requires that layoffs of permanent employees in State or local services be made in inverse order of seniority. Copies of both bills are attached. The Acting Governor vetoed a third bill that would have required negotiations over job titles.