



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

PO Box 429
TRENTON, NEW JERSEY 08625-0429

ADMINISTRATION/LEGAL
(609) 292-9830
CONCILIATION/ARBITRATION
(609) 292-9898
UNFAIR PRACTICE/REPRESENTATION
(609) 292-6780

For Courier Delivery
495 WEST STATE STREET
TRENTON, NEW JERSEY 08618
FAX: (609) 777-0089

October 24, 2002

MEMORANDUM

TO: Commissioners

FROM: Bob Anderson
General Counsel

SUBJECT: Report on Developments in the Counsel's Office Since September 26, 2002

Commission Cases

Attached is an Appellate Division affirmance in North Bergen Tp. Bd. of Ed. and North Bergen Fed. of Teachers, Local 1060, P.E.R.C. No. 2002-12, 27 NJPER 370 (¶32135 2001), App. Div. Dkt. No. A-972-01T2 (9/26/02). The Commission held that the Board violated N.J.S.A. 34:13A-25 when it transferred a switchboard operator in its central office to a secretarial position at another worksite for disciplinary reasons and ordered her restored to her previous position. The Court found ample support in the record for the Commission's factual findings and concluded that the Commission's decision followed logically from its findings. Don Horowitz represented the Commission.

Also attached is an Appellate Division affirmance in Lumberton Ed. Ass'n and Lumberton Tp. Bd. of Ed., P.E.R.C. No. 02-13, 27 NJPER 372 (¶32136 2001), aff'd App. Div. Dkt. No. A-1328-01T5 (10/08/02). The Commission held that the Board had to negotiate over the question of allowing employees to stack FMLA leave and other leaves of absence. The FMLA grants employers discretion over that issue and that discretion can be exercised consistent with the duty to negotiate under the Employer-Employee Relations Act. The decision is a straightforward affirmance, with no new legal principles.

An appeal has been filed in Morris Cty. and Morris Council No. 6, P.E.R.C. No. 2003-22, ___ NJPER ___ (¶____ 2002). The Commission ordered the employer to provide the majority representative with a list of the home addresses of all employees in the negotiations unit.

Other Cases

An Appellate Division panel has held that a shore community may hire special police officers for the summer session, even if it has recently laid off regular police officers. In re Special Police Officers, Borough of Keansburg, App. Div. Dkt. No. A-0564-01T2 (9/30/02). The Court finds that such hirings do not necessarily violate N.J.S.A. 40A:14-146.16b which prohibits using special officers “to replace or substitute for full-time, regular police officers or in any way diminish the number of full-time officers employed by the local unit.” The Court reasons that the municipality’s decision to reduce its regular, year-round force for economic reasons is separate from the need for enhanced law enforcement services during the summer absent a showing that the layoffs were made in bad faith.

Attached is an Appellate Division decision upholding a grievance arbitration award that reinstated a janitor whose contract was not renewed. Mount Laurel Tp. Bd. of Ed. v. Mount Laurel Ed. Ass’n, App. Div. Dkt. No. A-971-01T5 (10/17/02). The arbitrator found that the non-renewal was motivated by disciplinary reasons and that the board lacked just cause to take that disciplinary action. A trial court vacated the award, relying on Marlboro Tp. Bd. of Ed. v. Marlboro Tp. Ed. Ass’n, 299 N.J. Super. 283 (App. Div.), certif. den. 151 N.J. 71 (1997) and finding that the dispute was not contractually arbitrable regardless of the reasons for that non-renewal. The Appellate Division panel held that the arbitrator’s interpretation of the just cause clause was reasonably debatable and so upheld the award.

An Appellate Division panel has also held that a Civil Service employer violated N.J.A.C. 4A:2-6.2(c) by automatically prohibiting all extensions of leave after an employee had exhausted FMLA leave. Hughes v. Mercer Vicinage Judiciary, App. Div. Dkt. No. A-6832-00T5 (10/04/02). The regulation provides that an employee will be considered to have abandoned a position if he or she does not return to work within five business days after an approved leave of absence, but further provides that a request for an extension shall not be unreasonably denied.

REA:aat
Attachments