

STATE OF NEW JERSEY PUBLIC EMPLOYMENT RELATIONS COMMISSION

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MEMORANDUM

TO: Commissioners

FROM: Robert E. Anderson April 24, 2003

General Counsel

RE: Supplemental Report on Developments in

the Counsel's Office Since March 27, 2003

Commission Cases

JNESO District Council No. 1 has withdrawn its appeal in <u>Essex Cty. and JNESO</u>, P.E.R.C. No. 2003-42.

Other Cases

The New Jersey Supreme Court has invalidated the results of make-up exams administered by the Department of Personnel for promotions to sergeant in the Paterson Police Department. In re Police Sergeants (PM3776V) City of Paterson, ____ N.J. ____ (2003). The questions given on the make-up exam were the same as those given on the original exam, a practice of DOP's which was not unconstitutional but which caused problems in this case when, shortly after the original exam, many of the questions were discussed, typed out, and distributed within the police department. The Court held that this breach of security required invalidating the make-up exams (but not the original exam). The Court also specified that from now on, the Merit System Board and DOP should administer make-up exams that contain substantially or entirely different questions from those used in the original exam.

In Entrot v. BASF Corp, 2003 N.J. Super. Lexis 122 (App. Div. 2003), an Appellate Division panel reversed a summary judgment in the employer's favor in a sex discrimination case under the LAD and remanded for a trial on whether a co-employee on a temporary team project was a "supervisor." The Court held that for LAD purposes, the question of supervisory status turns on "whether the power the offending employee possessed was reasonably perceived by the victim, accurately or not, as giving that employee the power to adversely affect the victim's working life." Relevant indicia of such power include the power to fire and demote, to influence compensation, to direct all job functions, and to act in subtle and indirect ways to control the workplace and to restrict the victim-employee's freedom to ignore sexually-harassing conduct.

REA:kph