STATE OF NEW JERSEY
PUBLIC EMPLOYMENT RELATIONS COMMISSION

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June 23, 2005

M E M O R A N D U M

TO: Commissioners

FROM: Robert E. Anderson
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SUBJECT: Monthly Report on Developments in the Counsel's Office Since May 26, 2005

Commission Cases

Oral argument has been scheduled for June 28 in Lakehurst Bd. of Ed. and Lakehurst Ed. Ass'n, P.E.R.C. No. 2004-74, 30 NJPER 186 (¶69 2004), App. Div. Dkt. No. A-005624-03T1. The Association has appealed the parts of the Commission's decision holding that the Board did not commit unfair practices when an administrator gave two employees "needs improvement" ratings and when the administrator called a teacher "passive-aggressive."

Two appeals have been filed. One is in Passaic Valley Water Commission and CWA Local 1032, P.E.R.C. No. 2005-66, __ NJPER ___ (¶___ 2005). There, the Commission declined to restrain binding arbitration of a grievance seeking compensation for an employee who allegedly performed duties in a higher classification for over four years. The other is in Old Bridge Tp. Ed. Ass'n v. Old Bridge Tp. Bd. of Ed., P.E.R.C. No. 2005-64, __ NJPER ___ (¶___ 2005). There, the Commission concluded that the transfer of a teacher between work sites was based on the teacher's difficulty in getting along with other employees rather than disciplinary reasons. It therefore dismissed a contested transfer petition.

Other Cases

In <u>Wowkun v. Closter Bd. of Ed.</u>, __ <u>N.J. Super</u>. ___ (Chan. Div. 2005), Judge Doyne upheld the application of a nepotism policy to terminate a non-tenured science teacher after she married a tenured physical education teacher. The policy applied only to non-tenured employees. Judge Doyne rejected claims that the policy violated the New Jersey LAD, Title VII, and the Equal Protection clause of the United States Constitution.

In <u>Flora v. Hudson Cty. Sheriff's Dept</u>., App. Div. Dkt. No. A-3192-03T2 (5/20/05), the Court dismissed a Complaint against the employer and several government officials. Among the claims asserted was a contention that the employer had terminated the plaintiff without making a reasonable accommodation for his dyslexia in violation of the Civil Rights Act of 1964, the Americans with Disability Act, and the New Jersey Law Against Discrimination. These claims were dismissed as untimely since they were filed more than two years after the plaintiff was terminated. The Court rejected the plaintiff's claim that the six-year statute of limitations for contract actions applied since the collective bargaining agreement required observance of civil rights laws; the Court held that the claims arose by virtue of the statutes, not the contract, and that recharacterizing the claim could not change its nature. The Court also held that the plaintiff abandoned his contractual rights by not following the appeal steps in the grievance procedure.

In <u>Beasley v. Passaic Cty</u>., 2005 <u>N.J. Super</u>. <u>LEXIS</u> 166 (App. Div. 2005), the Court reversed a judgment against the County in a CEPA action filed by a supervisory officer at the Passaic County Juvenile Detention Center. The Court held that the trial judge erroneously admitted the testimony of the Center's director that "downtown" wanted him fired. This testimony constituted double hearsay ; because the "downtown" statement was not attributed to any individual, the County had no opportunity to cross-examine the source of such information. The decision also discusses at length what constitutes an "adverse employment action taken against an employee in the terms and conditions of employment" under N.J.S.A. 34:19-2(e). Injury to an employee's pride is not actionable. However, many separate but relatively minor instances of behavior directed against an employee may be actionable as a pattern of retaliatory conduct even if each one is not actionable individually.

REA:aat