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June 30, 2005

MEMORANDUM

TO: Commissioners

FROM: Robert E. Anderson  
General Counsel

SUBJECT: Supplemental Report on Developments in the Counsel's Office Since May 26, 2005

Commission Cases

\_\_\_\_\_ An Appellate Division panel has affirmed City of Newark and Newark Firefighters Union, P.E.R.C. No. 2005-2, 30 NJPER 294 (¶102 2004), App. Div. Dkt. No. A-000493-04T3 (6/23/05) (copy attached). The Commission restrained arbitration of grievances contesting the City's involuntary transfers of several firefighters and its denial of transfer requests of other firefighters. The City transferred firefighters between companies; it asserted several reasons for these transfer decisions, including a desire to achieve racial balance in the fire companies. The grievances asserted that the City was required to make its transfer decisions by seniority, but the Commission held and the Court agreed that the City had a non-arbitrable prerogative to decide whom to transfer between companies and that the NFU's claim of racial discrimination did not make the transfer decisions arbitrable. See Teaneck Tp. Bd. of Ed. v. Teaneck Teachers Ass'n, 94 N.J. 9 (1983). The Court also held that the Commission properly declined to consider the merits of the NFU's racial discrimination claim or to take evidence on the merits of the reasons given by the City for its decisions.

An appeal has been filed in Monmouth Univ. and West Long Branch PBA Local No. 141, P.E.R.C. No. 2005-72, 31 NJPER 142 (¶62 2005). The Commission held that Monmouth University is a private sector employer and thus the Commission has no jurisdiction over its labor relations disputes.

\_\_\_\_\_The appeal in Hillsborough Bd. of Ed. and Hillsborough Ed. Ass'n, P.E.R.C. No. 2005-54, 31 NJPER 99 (¶43 2005), App. Div. Dkt. No. A-3935-04T3, has been dismissed with prejudice. The parties settled the underlying dispute.

### **Other Cases**

The Supreme Court has dismissed a CEPA action brought by a former county prosecutor against Governor McGreevey, the Attorney General, and the State. Yurick v. State, 2005 N.J. LEXIS 616 (2005). Pursuant to N.J.S.A. 52:17B-106, the Attorney General superseded the prosecutor after his five-year term of office expired. The Court concludes that the prosecutor did not have a reasonable expectation that he would be permitted to serve as a holdover and holds that his supersession could not be considered a “retaliatory action” under CEPA. The Court also holds that the plaintiff could not claim that the alleged underfunding of his office by the freeholders constituted a retaliatory action under CEPA when he did not invoke his right under N.J.S.A. 2A:158-7 to ask an assignment judge to order an increase in funding.

In re Military Service Credit, 2005 N.J. Super. LEXIS 185 (App. Div. 2005), holds that teachers employed in State departments or agencies are not entitled to receive military service credits under N.J.S.A. 18A:29-11. This education law applies only to “teaching staff members” as defined by N.J.S.A. 18A:1-1 - - i.e. teachers employed by local school districts, regional boards of education, or county vocational schools.

### **Legislation**

The Assembly and the Senate have approved two bills that would supplement and amend the New Jersey Employer-Employee Relations Act. A-3816 (copy attached) would supplement the Act by limiting the number of collective negotiations units for civilian employees of the State to the ten units already existing. An existing or newly established title that is not assigned managerial executive or confidential employee duties may be placed in one of the ten units by the Governor’s Office of Employee Relations, subject to challenge through a unit clarification petition. A-1820 (copy attached) would amend section 5.3 to require the Commission to certify a labor organization as the majority representative if a majority of employees in the unit sign authorization cards indicating their preference for that organization and if the Commission finds that there is only one labor organization seeking to be the majority representative.

In addition, the Governor has signed a bill, S-2264, amending the unemployment compensation law to provide for the payment of benefits to employees who have been locked out during a labor dispute. Such benefits will be paid despite a lockout if the employees have not engaged in a strike immediately before being prevented from working and if their majority representative has directed the employees to continue working under their preexisting terms and conditions of employment. P.L. 2005, c. 103.

REA:aat