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M E M O R A N D U M

TO: Commissioners

FROM: Robert E. Anderson
General Counsel

SUBJECT: Monthly Report on Developments in the Counsel's Office Since June 30, 2005

Commission Cases

An Appellate Division panel has affirmed Lakehurst Bd. of Ed. and Lakehurst Ed. Ass'n, P.E.R.C. No. 2004-74, 30 NJPER 186 (¶69 2004), aff'd __ NJPER __ (¶__ 2005), App. Div. Dkt. No. A-005624-03T1 (7/12/05) (copy attached). In this unfair practice case, the Commission found that several unfair practices had been committed, but dismissed several other allegations in the Complaint. The Association appealed the dismissal of two of its unfair practice allegations -- that the superintendent had call a teacher "passive-aggressive" and that the principal had given two teachers ratings of "needs improvement" after they prevailed in a grievance contesting related reprimands.

Other Cases

In Hennessey v. Winslow Tp., __ N.J. LEXIS ___ (2005), the New Jersey Supreme Court held that a clerk/typist was not collaterally estopped from filing a Superior Court action alleging that her termination violated the Law Against Discrimination. The employer issued a Preliminary Notice of Disciplinary Action asserting that the employee should be terminated for not returning to work at the end of an authorized leave of absence. At a departmental hearing, the hearing officer concluded that the employee could only perform light duty work and there

was no light duty position available so the employer could terminate her. Rather than appeal the Final Notice of Disciplinary Action to the Merit System Board, the employee filed a disability discrimination claim with the EEOC. The EEOC determined that the employer had violated the Americans with Disabilities Act by failing to offer the employee a reasonable accommodation. The employee then filed her lawsuit in the Superior Court. The trial court dismissed the lawsuit on the grounds of collateral estoppel because she had not appealed the adverse ruling at her departmental hearing to the Merit System Board. The Appellate Division and the Supreme Court, however, held that the employee had a right to file a LAD claim in Superior Court instead of an appeal to the Merit System Board.

In Bergen Cty. PBA Local 134 v. Bergen Cty. Sheriff's Office, App. Div. A-5882-03T3 (6/14/05), an Appellate Division panel affirmed a trial court order denying a motion to vacate an arbitration award. The arbitrator had rejected a grievance asserting that corrections officers who had transferred to positions as sheriff's officers were entitled to have their time spent as corrections officers counted in determining seniority rankings for selecting vacations. The Court held that the arbitrator properly relied on a letter from the Commissioner of the Department of Personnel in determining the rights of employees under the contractual provisions on seniority. That letter stated that if a permanent sheriff's officer was transferred to a correction officer position, seniority would be retroactively calculated, but that if a permanent correction officer transferred to a sheriff's officer position, the transfer would be provisional pending completion of additional required training with permanent appointment only on approval of the lateral title change. The contract had linked vacation selection by seniority to "permanent appointment to a title" and the letter gave meaning to that "term of art drawn from DOP parlance."

In Cranford Tp. v. State Health Benefits Commission, App. Div. Dkt. No. A-5593-03T1 (5/20/05), an Appellate Division panel affirmed a determination of the State Health Benefits Commission requiring the employer to pay the full cost of health care coverage for employees who retired before 1993. The employer had argued and an Administrative Law Judge had agreed that N.J.S.A. 52:14-17.38, as amended in 1999, allowed it to determine contributions for retirees' health insurance premiums through collective negotiations agreements. However, the Court held that before 1999, an employer participating in the SHBP was statutorily required to pay for all premiums and that the Legislature did not intend to authorize taking away that benefit from employees who had already retired. The fact that this employer left the SHBP between 1997 and 2000 and that its retirees paid for part of their premiums for that period by virtue of a collective negotiations agreement then in effect did not warrant allowing the employer to continue charging these retirees after the employer rejoined the SHBP.

Statutes

The Governor has signed a bill amending section 5.3 of the New Jersey Employer-Employee Relations Act. P.L. 2005, c. 61 (copy attached). The new law authorizes an employee organization to obtain Commission certification as the majority representative based on a card check rather than an election if no other organization is seeking to represent the negotiations unit employees and if a majority of employees in the unit have signed cards authorizing such representation.

The Governor has also signed a bill, P.L. 2005, c. 42 (copy attached), limiting the number of negotiations units of civilian State employees to the 10 units already existing. Employees in new or existing titles may be added to these units through the Commission's unit clarification procedures.

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Attachment