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March 22, 2006

MEMORANDUM

TO: Commissioners

FROM: Robert E. Anderson
General Counsel

SUBJECT: Monthly Report on Developments in the Counsel's Office Since February 23, 2006

Commission Cases

_____ An appeal has been filed in Bridgewater Tp. and Bridgewater Tp. PBA Loc. 174, P.E.R.C. No. 2006-62, ___ NJPER ___ (¶___ 2006). The Commission held that the Township committed an unfair practice when it unilaterally ended a practice of allowing employees about to retire to use accumulated sick leave days for terminal leave.

_____ Oral argument was held on March 22 in Old Bridge Tp. Bd. of Ed. and Old Bridge Tp. Ed. Ass'n, P.E.R.C. No. 2005-64, 31 NJPER 116 (¶49 2005), App. Div. Dkt. No. A-5245-04T5. The Commission dismissed a contested transfer petition after concluding that a teacher was transferred because he couldn't get along with other employees rather than for disciplinary reasons.

_____ Oral argument has been scheduled for March 29 in Passaic Valley Water Commission and CWA Local 1032, P.E.R.C. No. 2005-66, 31 NJPER 121 (¶51 2005), App. Div. Dkt. No. A-005195-04T1. The Commission declined to restrain arbitration of a grievance seeking compensation for work performed in a higher classification.

Oral argument has been scheduled for April 24 in Monmouth University and West Long Branch PBA Local No. 141, P.E.R.C. No. 2005-72, 31 NJPER 142 (¶62 2005), App. Div. Dkt. No. A-005635-04T2. The Commission held that Monmouth University is a private employer and hence not subject to its jurisdiction in a representation case.

The Third Circuit Court of Appeals has affirmed the dismissal of two federal lawsuits filed by a court reporter formerly employed by the Administrative Office of the Courts against the Commission and multiple other defendants. Yuhasz v. Poritz, Dkt. No. 05-1660 (2/15/06), and Yuhasz v. Leder, Dkt. Nos. 05-1838 and 05-2872 (2/15/06). The allegations against the Commission were dismissed as time-barred, but the Court suggested that other reasons could have been given as well. My annual report contained this summary of the district court opinion in Yuhasz v. Leder:

Judge Pisano of the United States District Court dismissed a Complaint filed by a former court reporter employed by the Administrative Office of the Courts against 44 named defendants, including several unions and union attorneys, several judges, the Attorney General, and the Commission. *Yuhasz v. Leder*, Civ. Action No. 04-1508 (JAP), appeal pending. The 332-paragraph Complaint contested a 1995 job transfer and subsequent discharge and was the eighth lawsuit Yuhasz had filed contesting these events. The Court dismissed the Complaint on several grounds, including res judicata, the entire controversy doctrine, timeliness, and failure to state a claim. The Court specifically held that the Eleventh Amendment to the United States Constitution barred a federal court action against the Commission absent the State's consent and that in any event, her claims lacked a factual basis and were untimely. The Court also required Yuhasz to show cause why she should not be barred from filing future Complaints based on the same matters without obtaining leave of court.

In Farber v. City of Paterson, 2006 U.S. App. 5778 (3d. Cir. 2006), the Third Circuit Court of Appeals held that a plaintiff may bring a court action alleging that a public sector majority representative has breached its duty of fair representation and that the statute of limitations for such a claim is the six-year period covering tort claims rather than the six-month period covering unfair practice claims. The Court recognized PERC's exclusive jurisdiction and the labor relations policies favoring a six-month period, but concluded that it is up to the Legislature rather than the Court to shorten the limitations period for a DFR claim.

The Court also dismissed a claim that the City of Paterson conspired to deprive an employee of her First Amendment rights by terminating her because of her political affiliation. The Court concluded that federal civil rights law does not provide a cause of action for individuals allegedly injured by conspiracies motivated by discriminatory animus directed toward their political affiliation.

REA:aat