STATE OF NEW JERSEY
PUBLIC EMPLOYMENT RELATIONS COMMISSION

PO Box 429
TRENTON, NEW JERSEY 08625-0429

www.state.nj.us/perc

ADMINISTRATION/LEGAL
(609) 292-9830
CONCILIATION/ARBITRATION
(609 292-9898
UNFAIR PRACTICE/REPRESENTATION
(609) 292-6780

For Courier Delivery
495 WEST STATE STREET
TRENTON, NEW JERSEY 08618

FAX: (609) 777-0089
EMAIL: mail@perc.state.nj.us

January 25, 2007

M E M O R A N D U M

TO: Commissioners

FROM: Robert E. Anderson
General Counsel

SUBJECT: Supplemental Report on Developments in the Counsel's Office Since December 14, 2006

Commission Cases

No developments.

Other Cases

In Altieri v. Rutgers, App. Div. Dkt. No. A-0771-05T5 (1/19/07), an Appellate Division panel affirmed the dismissal of a lawsuit asserting that the employer violated the just cause clause in its collective agreement with the FOP when it discharged a police officer. The Court found dispositive a provision in the just cause clause stating that "[i]n the case of any disciplinary action, the sole right and remedy under this Agreement shall be to file a grievance through and in accordance with the grievance procedure." That grievance procedure ended in binding arbitration, but the FOP had withdrawn an attempt to arbitrate a grievance given State v. State Troopers Fraternal Ass'n,134 N.J. 393 (1993) and PERC cases applying State Troopers to hold that Rutgers' police officers could not arbitrate major disciplinary actions. The Court noted that the plaintiff had not awaited a decision from PERC or sought review of Rutgers' decision for arbitrariness by way of action in lieu of prerogative writ.

In Rutgers and FOP Lodge 62, P.E.R.C. No. 2007-5, 32 NJPER 274 (¶113 2006), app. pending, App. Div. Dkt. No. A-0485-06T5, the Commission restrained binding arbitration of a grievance contesting a police officer's termination. An appeal is pending so the Appellate Division will decide one of the issues identified in Altieri.

Court Cases

In Wein v. Morris, 388 N.J. Super. 640 (App. Div. 2006), the Court held that a party who participated in trial court litigation waived a contractual right to have a commercial dispute arbitrated. Further, the opposing party did not waive a right to contest a belated order compelling arbitration by participating in the arbitration and losing rather than immediately seeking to appeal that order. Although the order appeared to be final because it dismissed all claims and cross-claims, the Court held that it was interlocutory because motions to confirm or vacate an award could be filed later and because the trial court lacked power to dismiss the action and could only stay it. The Court contrasted orders compelling arbitration, which are interlocutory, with orders refusing to compel arbitration, which are appealable under N. J. S. A. 2A:23B-28(a).

Although these rulings mooted the appeal of the arbitration award itself, the Court also opined that the arbitrator exceeded his authority under AAA rules when he amended his award. The Court concluded that the arbitrator went beyond correcting "clerical, typographical, or computational errors," as permitted by Rule 46, and granted a form of relief denied by his original award. The Court rejected an argument, based on a California case, that Rule 46 also allowed the arbitrator to "deal with inadvertent omissions."

In Larsen v. Branchburg Tp., App. Div. Dkt. No. A-0190-05T2 (1/22/07), an Appellate Division panel affirmed the dismissal of a patrol officer's claim that she suffered gender discrimination and disparate treatment when the police chief refused to make an exception to the department's "no-light-duty" policy while she was pregnant. The panel concluded that a normal pregnancy is not a disability protected by the NJLAD and that the employer was not required to grant pregnant employees a benefit not available to other employees.

REA:kph