



STATE OF NEW JERSEY  
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October 23, 2009

MEMORANDUM

**TO:** Commissioners

**FROM:** Ira W. Mintz  
General Counsel

**SUBJECT:** Monthly Report on Developments in the Counsel's Office Since September 24, 2009

Commission Cases

\_\_\_\_\_The State of New Jersey has appealed the Commission's decision in P.E.R.C. No. 2010-13, NJPER \_\_ (¶\_\_ 2009). In that decision, the Commission adopted, with modifications, a Hearing Officer's report and recommended decision arising out of a representation petition filed by the New Jersey State Troopers Captain's Association seeking to represent a collective negotiations unit of State police captains employed by the State of New Jersey (Division of State Police). The employer opposed the petition asserting that all of the captains are managerial executives or confidential employees ineligible for inclusion in any negotiations unit pursuant to the New Jersey Employer-Employee Relations Act, N.J.S.A. 34:13A-1 et seq. The Commission affirmed the Hearing Officer's recommendation that some of the captains are managerial executives or confidential and some are eligible for inclusion in the unit. The Commission rejected the Hearing Officer's finding that the executive officers have a conflict of interest and held that most of the executive officers are eligible for inclusion in the unit with the exception of those in confidential or managerial executive positions.

Other Cases

In Irvington Tp. and Irvington PBA Local 29, App. Div. Dkt. No. A-0152-08T1 (10/21/09), the trial court had confirmed a arbitration award and a supplemental award involving

three negotiations units. The dispute stemmed from a 27-pay period year (2004). The arbitrator determined that as a result of the Township's unilateral adjustment of the pay periods, each affected employee was entitled to an additional ten days' compensation. The trial judge upheld the ruling on the merits but remanded to the arbitrator to consider an alternative remedy that might pose less of an immediate fiscal hardship on the Township. The arbitrator modified the remedy so that if all officers sought present cash payments, the Township would only have to pay out immediately a maximum of 50 % of the compensation due, valued as of the salary then in effect; the remaining hours to be used as time due or cashed in upon separation from employment, also to be valued as of that time. The trial judge then confirmed the supplemental award. The Appellate Division reviewed an arbitrator's obligation to consider the impact on the public, held that the supplemental award was reasonably debatable, and affirmed the trial court decision confirming it.

In Montclair Township v. CWA, App. Div. Dkt. No. A-0028-08T3 (10/19/09), the Appellate Division reversed the trial court's grant of a restraint of arbitration and held that the issue of whether the grievance procedure that required just cause for discipline applied to probationary employees is an issue for the arbitrator, not a court. The Appellate Division relied on Amalgamated Transit Union, Local 880 v. New Jersey Transit Bus Operations, Inc., 200 N.J. 105 (2009).

In Peck v. City of Hoboken, App. Div. Dkt. No. A-1203-08 (10/16/09), the Hoboken Police Department and the City of Hoboken appealed from the grant of summary judgment to plaintiff police officer James Peck in which the trial court granted Peck's application for attorneys' fees and costs pursuant to N.J.S.A. 40A:14-155. That statute permits an award of attorneys' fees to a police officer who obtains a dismissal of disciplinary charges filed against him, but only when the disciplinary charges arise out of, and are directly related to, the lawful exercise of police powers in the furtherance of the officer's official duties. The Appellate Division affirmed.

In Nunez v. Pachman, App. Div. Dkt. No. A-1851-08 (10/14/09), the Appellate Division reversed a trial court because the judge mistakenly held that defendants were privileged to reveal expunged criminal records at a grievance arbitration hearing. The Court stated that questions surrounding the State constitutional right of privacy have not been sufficiently developed. Some related issues were litigated in federal court. See Nunez v. Pachman, 578 F.3d 228 (3rd Cir. 2009).