

PUBLIC EMPLOYMENT RELATIONS COMMISSION

GENERAL COUNSEL'S ANNUAL REPORT - 1996

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1996 Statistics

The Commission received two affirmances from the New Jersey Supreme Court and eight affirmances and one reversal from the Appellate Division of the Superior Court. The Supreme Court will review the only reversal. In addition, five appeals were dismissed or withdrawn and one decision was enforced.

Unfair Practice Cases

The Supreme Court upheld the Commission's decision in *UMDNJ and CIR*, P.E.R.C. No. 93-114, 19 *NJPER* 342 (¶24155 1993), recon. granted, P.E.R.C. No. 94-60, 20 *NJPER* 45 (¶25014 1994), aff'd 21 *NJPER* 319 (¶26203 App. Div. 1995), aff'd 144 *N.J.* 511 (1996). The Commission held that the employer committed unfair practices when it denied an intern union representation at an investigatory interview and when it denied the union information about the intern's summary suspensions and ultimate termination. The Court specifically held that the Commission properly interpreted the Employer-Employee Relations Act, *N.J.S.A.* 34:13A-1 *et seq.* ("Act"), to grant *Weingarten* rights to public employees and information rights to public employee representatives.

In *Middletown Tp. Bd. of Ed and Middletown Ed. Ass'n*, P.E.R.C. No. 96-45, 22 *NJPER* 31 (¶27016 1995), aff'd 23 *NJPER* 53 (¶23086 App. Div. 1996), pet. for certif.

pending, the Commission held that the employer discriminatorily reprimanded employees for their Association activities. It also deferred to arbitration a contractual issue concerning bulletin board use. The Court agreed on all counts.

In *City of Newark and FOP Lodge No. 12 and Newark PBA Local #3*, P.E.R.C. No. 96-53, 22 *NJPER* 67 (¶27030 1996), aff'd 23 *NJPER* 34 (¶28022 App. Div. 1996), the Commission and the Court held that the City violated the exclusivity doctrine by granting paid release time to three PBA officials who were employees in an FOP negotiations unit.

In *Newark Bd. of Ed. and Newark Teachers Ass'n*, P.E.R.C. No. 96-17, 213 *NJPER* 349 (¶26215 1995), aff'd 22 *NJPER* 255 (¶27132 App. Div. 1996), cert. den. __ *N.J.* __ (1996), the charging party argued that the Hearing Examiner and the Commission should have applied standards developed under the Law Against Discrimination, *N.J.S.A. 10:5-1 et seq.*, in considering a motion to dismiss a 5.4(a)(3) case requiring proof of anti-union animus. The charging party, an Association official, specifically argued that she had carried her burden by proving that she was denied a promotion given to two other employees with the same Civil Service test scores but with less or no union activity. The Commission and Court held that LAD standards do not apply in unfair practice cases and that the charging party had not introduced evidence showing that anti-union animus motivated the promotion denial. *See also In re Bridgewater Tp.*, 95 *N.J.* 235, 243, n. 3 (1984).

An Appellate Division panel affirmed *Atlantic City Ed. Ass'n and Atlantic City Bd. of Ed.*, P.E.R.C. No. 95-98, 21 *NJPER* 216 (¶26136 1995), 22 *NJPER* 90 (¶27042 App. Div. 1996). The Commission held that the employer could unilaterally require teachers seeking

to transfer to a new high school to submit references and essays and to be interviewed by a committee including students and community members.

The Appellate Division summarily affirmed the Commission's decision in *State of New Jersey (DEP) and Local 195, IFPTE*, P.E.R.C. No. 96-27, 21 *NJPER* 388 (¶26238 1994), aff'd 22 *NJPER Supp.2d* 449 (¶27232 App. Div.1996), certif. den. __ *N.J.* __ (1996). Like its companion case, *State of New Jersey (DEP) and CWA*, 285 *N.J. Super.* 541 (App. Div. 1995), certif. den. 143 *N.J.* 541 (1996), this case held that the complex of Civil Service statutes and regulations governing State employees preempted negotiations over a workweek reduction/layoff issue.

Scope-of-Negotiations Cases

The Supreme Court affirmed *New Jersey Turnpike Auth. and New Jersey Turnpike Supervisors Ass'n*, P.E.R.C. No. 93-121, 19 *NJPER* 360 (¶24162 1993), aff'd 276 *N.J. Super.* 329 (App. Div. 1994), aff'd 143 *N.J.* 185 (1996). The Authority suspended a toll plaza supervisor for three days for alleged sexual harassment and the Association demanded arbitration pursuant to a just cause clause. The Court held that the discipline amendment to *N.J.S.A.* 34:13A-5.3 permitted binding arbitration of this disciplinary dispute and the Law Against Discrimination did not prohibit arbitration.

In *New Jersey Turnpike Auth. and Local 194, IFPTE*, P.E.R.C. No. 96-25, 21 *NJPER* 361 (¶26223 1995), aff'd 292 *N.J. Super.* 174 (App. Div. 1996), certif. den. 147 *N.J.* 260 (1996), the Commission held not mandatorily negotiable a clause prohibiting certain layoffs absent an "Act of God" and requiring negotiations over other layoffs. The union unsuccessfully argued that the negotiability standards set forth in *Local 195, IFPTE v.*

State, 88 N.J. 393, 404-405 (1982), should not be applied since the Turnpike Authority was akin to a private entity.

In *New Jersey Transit Bus Operations, Inc. and ATU*, P.E.R.C. No. 96-11, 21 NJPER 286 (¶26103 1995), aff'd 22 NJPER 256 (¶27133 App. Div. 1996), the Commission restrained arbitration of a grievance asserting that NJTBO violated the NJT-ATU contract when it contracted to have two bus companies deliver bus services on certain routes, but did not require the companies to assume the NJT-ATU contract. The Commission held that requiring the companies to assume the contract and its recognition clause would illegally deny the companies' employees the opportunity to choose their own representatives.

Representation Cases

The Supreme Court has granted certification to review a reversal of a Commission decision concerning the representational rights of Turnpike Authority employees above the first level of supervision. *New Jersey Turnpike Auth. and AFSCME Council 73, Locals 3912, 3913 and 3914*, 289 N.J. Super. 23 (App. Div. 1996), certif. granted 147 N.J. 261 (1996), rev'g *New Jersey Turnpike Auth.*, P.E.R.C. No. 94-24, 19 NJPER 461 (¶24218 1993) and D.R. No. 94-29, 20 NJPER 295 (¶25149 1994). The Court concluded, in an opinion by Judge Conley, that the exclusions of "managerial executives" and "confidential employees" set forth in N.J.S.A. 34:13A-3(f) and (g) are broader than had been held for 20 years. In particular, the Court held that private sector tests apply in determining who is a managerial executive and that employees gathering cost data and critiquing contract

provisions affecting lower-level employees in different negotiations units may be considered confidential.

The same panel affirmed a Commission decision denying statutory representational rights to investigators in the Division of Criminal Justice. *In re Division of Criminal Justice State Investigators*, 289 N.J. Super. 426 (App. Div. 1996), aff'g P.E.R.C. No. 94-113, 20 NJPER 256 (¶25127 1994), certif. den. __ N.J. __ (1996). The Commission held that the investigators are not covered by the Act because N.J.S.A. 52:17B-100(b) deems all Division employees, except for secretarial and clerical personnel, to be confidential employees. The Court affirmed that ruling and then held that this statutory exclusion did not violate the New Jersey and United States Constitutions. The right of public employees under N.J. Const. Art. 1, ¶19 (1947) "to organize, present to and make known ... their grievances and proposals through representatives of their choosing" entitles public employees to join a union, but not to negotiate over their employment conditions.

Enforcement

Judge McGann enforced an order of the Director of Representation in *Middletown Tp. Bd. of Ed. and Middletown Tp. Ed. Ass'n*, D.R. No. 95-31, 21 NJPER 253 (¶26163 1995), order enforced Ch. Div. Dkt. No MON-C-62-96. That order clarifies a negotiations unit to include a computer associate.

Statutes

A. Interest Arbitration

On January 10, 1996, Governor Whitman signed the Police and Fire Public Interest Arbitration Reform Act. P.L. 1995, c. 425. This law revises the interest arbitration law

codified at *N.J.S.A. 34:13A-16 et seq.* A synopsis follows, but the reader must rely on the text of the law rather than this synopsis.

Section 1 provides a name for the interest arbitration statute: the Police and Fire Public Interest Arbitration Reform Act.

Section 2 modifies the legislative declaration of public policy. The Legislature recognizes the unique and essential duties police officers and firefighters perform and the life-threatening dangers they face. The interest arbitration procedure is declared to promote the well-being and benefit of New Jersey citizens as well as the high morale of employees and the efficient operation of police and fire departments. That procedure is meant to ensure that the arbitrators recognize and consider the interests and welfare of the taxpaying public and the impact of their decisions on the public interest and welfare.

Section 3a changes the dates for commencing negotiations, filing interest arbitration petitions, and notifying the Commission of agreed-upon terminal procedures. Negotiations must begin at least 120 days before a collective negotiations agreement expires and the parties must meet at least three times within that period unless they agree to postpone the second and third meetings. A violation of these deadlines constitutes an unfair practice. A petition to initiate interest arbitration may be filed on or after the contract expiration date. Within 10 days of a non-petitioning party's receipt of a petition, the parties must notify the Commission as to whether they have agreed upon a terminal procedure.

Subsection 3d establishes the terminal procedure if the parties have not agreed upon one. That procedure will now be conventional arbitration. The arbitrator must separately determine whether the total net annual economic changes for each year of the agreement are reasonable under the eight statutory criteria in subsection 3g.

Subsection 3e establishes the procedures for selecting an arbitrator if the parties have not agreed upon an arbitrator from the Commission's special panel. The Commission shall select the arbitrator (or replacement arbitrator) by lot, without the parties' participation. This subsection also provides that the Commission may suspend, remove, or discipline an arbitrator for violating statutory provisions or for other good cause.

Subsection 3f(1) changes the procedure for submitting final offers. Final offers must be submitted "on each economic and non-economic issue in dispute."

Subsection 3f(5) sets deadlines for issuing an award. An award must be issued within 120 days of an arbitrator's selection by the parties or assignment by the Commission. An arbitrator may petition the Commission for an extension of not more than 60 days. The parties may also agree to an extension. Arbitrators may be disciplined for violating these deadlines.

Subsection 3f(5)(a) provides that awards may be appealed to the Commission on the grounds that the arbitrator did not apply the criteria set forth in subsection 3g or violated the standards set forth in *N.J.S.A. 2A:24-8* and *24-9*.

Subsection 3g addresses the contents of an award and sets the criteria for deciding a dispute. The award must indicate which criteria are relevant, explain why other criteria are not relevant, and analyze the evidence on each relevant criterion. Specific changes have been made in the criteria for determining comparability; the employer's lawful authority in light of the cap law; and the financial impact on the governing unit, its residents and taxpayers in light of the municipal or county purposes element of the local property tax, the impact of an award on each income sector of property taxpayers, and the impact of an award on a governing body's ability to maintain, expand, or initiate programs or services.

A new section 4 requires the Commission to conduct an annual continuing education program. Every arbitrator must attend that program. Failure to do so for one year may result in discipline; failure to do so for two consecutive years will result in an arbitrator's immediate removal from the special panel.

A new section 5 requires the Commission to promulgate guidelines for determining the comparability of jurisdictions.

A new section 9 requires the Commission to issue an annual survey of private sector wage increases.

Section 11 states that the reform statute takes effect immediately and applies to all negotiations except those formal arbitration proceedings in which the arbitrator took testimony before January 10, 1996. If testimony was taken before that date, the parties will continue to use the terminal procedure in effect when the hearing began. If testimony was not taken by that date, conventional arbitration will be the terminal procedure absent an agreed-upon alternative. Any selection of an arbitrator or agreement upon a terminal procedure made before January 10, 1996 will continue to be effective.

B. Discipline

On September 11, 1996, Governor Whitman signed A-1836. *P.L. 1996, c. 115*. Part of an omnibus bill, one section amends the discipline amendment to *N.J.S.A. 34:13A-5.3* by expressly authorizing parties to agree to binding arbitration of disputes over minor discipline for all public employees except State troopers. Minor discipline is defined as a suspension or fine of less than five days. The bill displaces some dicta in *State v. State Troopers Fraternal Ass'n*, 134 *N.J.* 393 (1993), but not its holding.

C. Health Benefits

The Legislature has amended the statute governing the State Health Benefits Program to authorize the State and majority representatives to negotiate over the payment of health insurance premiums for retirees. *N.J.S.A. 52:14-17.28b*. Current retirees and employees who had 25 years of credited service before July 1, 1997 are not affected by this legislation, but the State's payment of SHBP costs for employees who reach 25 years of service after that date will be based on the union contract applicable to them at that time.

D. Age Discrimination

Congress has amended 29 *U.S.C.* §623 to allow age-based mandatory retirement systems for police officers and firefighters. But the mandatory retirement age cannot be below 55.

Regulations

The Commission readopted its mediation, factfinding, and grievance arbitration rules. Given the new interest arbitration statute, the Commission also revised and readopted its interest arbitration regulations and adopted new regulations. *See N.J.A.C. 19:16-1.1 et seq.* The new regulations establish a fee schedule for filing petitions and appeals, guidelines for determining the comparability of jurisdictions under *N.J.S.A. 34:13A-16g(2)*, and procedures for filing and considering disqualification motions. The Commission also proposed standards for appointments and reappointments to the special panel of interest arbitrators and procedures for suspending, removing, or otherwise disciplining arbitrators.

Interest Arbitration Cases

In *Aberdeen Tp. v. PBA Local 163*, 286 N.J. Super. 372 (App. Div. 1996), an Appellate Division panel vacated an interest arbitration award. The Court found that the award impermissibly cited statements made to the arbitrator in his capacity as a mediator.

In *Middletown Tp. PBA Local No. 124 and Middletown Tp.*, App. Div. Dkt. No. A-2688-94T5 (4/25/96), an Appellate Division panel confirmed an interest arbitration award in favor of the union. The Court noted the relatively insignificant cost differential between the raises sought by the PBA (5% each year) and offered by the Township (4% each year) and held that the arbitrator properly considered the statutory criteria found relevant.

Grievance Arbitration Cases

In *Weiss v. Carpenter, Bennett & Morrissey*, 143 N.J. 420 (1996), the Court vacated an arbitration award based on an estoppel ruling. The case concerned a law firm dissolution and is not important to labor relations practitioners for its holding, but it discusses labor relations cases and examines the scope of the public policy exception to the enforceability of an arbitration award. *Id.* at 429-40. *New Jersey Turnpike Auth. and New Jersey Turnpike Supervisors Ass'n, supra*, also discusses the differences in judicial review of public sector awards and private sector awards. 143 N.J. at 198-200.

In an example of the more zealous judicial review in the public sector, Judge Conley authored an opinion vacating an arbitration award in favor of an assistant professor seeking tenure. *Union Cty. College v. Union Cty. College AAUP Chapters*, 295 N.J. Super. 15 (App. Div. 1996). The Court held that the arbitrator improperly rejected the College's

reasons for denying tenure under the guise of finding that the reasons given were not specific enough.

In *Control Building Services, Inc. v. Issacson*, App. Div. Dkt. No. A-1768-95T5 (8/1/96), an Appellate Division panel vacated an award because an arbitrator had not disclosed a personal relationship with a party. The arbitrator, one of a three-person panel, had been designated by that party.

In *City of Newark and FOP Lodge No. 12*, App. Div. Dkt. No. A-2292-94T5 (6/14/96), the Appellate Division confirmed an award holding that the employer violated the parties' contract when it reduced the number of hospitals for which it would provide full health care coverage for its employees. The Commission had deferred to this award in a companion case holding that the employer could not unilaterally reduce its health care coverage. *City of Newark and Police Superior Officers Ass'n*, P.E.R.C. No. 95-108, 21 *NJPER* 229 (¶26146 1995), appeal withdrawn.

An Appellate Division panel affirmed an award holding that the employer violated the parties' contract when its Athletic Director did not interview the only applicant for a coaching position and persuaded another employee to take that position. The award ordered the employer to pay the grievant for that position. *Middletown Tp. Bd. of Ed. v. Middletown Ed. Ass'n*, App. Div. Dkt. No. A-34-94T5 (6/8/95).

Judge Farrell of the Chancery Division of the Salem County Superior Court dismissed the case of *Salem Cty. Bd. of Social Services v. Gant and PERC*, Dkt. No. SLM-L-141-96 (8/23/96). The employer unsuccessfully asserted that parties must use

lawyers to represent them in grievance arbitration proceedings and that the Commission must make sure they do.

In *State of New Jersey (OER) v. CWA*, Law Div. Dkt. No. 002045-95 (1/2/96), rev'd 296 N.J. Super. 223 (App. Div. 1997), recon. den., pet. for certif. pending, Judge Carchman confirmed an award concerning job security for unclassified employees. The arbitrator found that the employer had not given up the right to discharge unclassified employees without disclosing reasons, but was required to arbitrate discharges based on alleged misconduct and to bear the burden of proof in such cases.

Miscellaneous Cases

Representational Rights

In *International Union of Operating Engineers v. Delaware River and Bay Auth.*, App. Div. Dkt. No. A-2228-93T1 (8/2/95), certif. granted __ N.J. __ (1996), the Court held that DRBA employees have a right to organize and negotiate under the parallel labor relations laws of New Jersey and Delaware, although neither PERC nor the Delaware Department of Labor has jurisdiction over any disputes. The New Jersey Supreme Court heard argument in September.

In *South Jersey Catholic School Teachers Ass'n v. St. Teresa of the Infant Jesus Church Elementary School*, 290 N.J. Super. 359 (App. Div. 1996), the Court, in an opinion authored by Judge King, held that Article I, ¶19 of the New Jersey Constitution guaranteed elementary school teachers the right to representation and did not interfere with their employer's free exercise of religion.

Judge Gibson of the Chancery Division of the Superior Court in Atlantic County upheld the constitutionality of *N.J.S.A. 5:12-54(d)*. That provision declares that Casino Control Commission employees are confidential employees. *CWA Local 1038 v. Casino Control Commission*, Chan. Div. Dkt. No. ATL-C-107-94 (1/26/96).

Disciplinary Hearings

In *Dolan v. City of E. Orange Tp.*, 287 *N.J. Super.* 136 (App. Div. 1996), an Appellate Division panel held that a provisional Civil Service employee is entitled to a hearing before being discharged for alleged misconduct. Further, a determination of guilt may not be based solely on hearsay evidence.

In *Hernandez v. Overlook Hosp.*, 293 *N.J. Super.* 260 (App. Div. 1996), aff'g 291 *N.J. Super.* 462 (Chan. Div. 1995), certif. granted 164 *N.J.* 566 (1996), the Appellate Division held that a medical resident was entitled to be represented by counsel at a disciplinary hearing that might result in termination. Compare *UMDNJ and CIR*, *supra* at p. 1.

In *Hannigan v. Borough of Glen Ridge*, App. Div. Dkt. No. A-3039-95T2 (12/16/96), the Court held that failure to hold a timely disciplinary hearing under *N.J.S.A. 40A:14-147* does not mandate dismissal of disciplinary charges against a police officer.

Salary Increments and Other Compensation Issues

In *Neptune Tp. Bd. of Ed. v. Neptune Tp. Ed. Ass'n*, 144 *N.J.* 16 (1996), the Supreme Court held that an education statute, *N.J.S.A. 18A:29-4.1*, prohibits the payment of increments to teaching staff members during successor contract negotiations after a three-year contract has expired. It thus overrules *Galloway Tp. Bd. of Ed. v. Galloway Tp.*

Ed. Ass'n, 78 N.J. 25 (1978) to the extent that case required the payment of increments under such circumstances.

In *Neptune Tp. Bd. of Ed. v. Neptune Tp. Ed. Ass'n*, 293 N.J. Super. 1 (App. Div. 1996), certif. den. 147 N.J. 259 (1996), the Appellate Division held that it was not an unconstitutional gift of public monies for a school board to make monthly payments to credit unions and annuity plans before employees have worked the entire month. The Court reasoned:

The entire issue of employee compensation, whether by way of salary, customary fringe benefits, or other reasonable modes of payment related to the rendition of employee services or the administration of labor contracts, is generally within the power of the public employer to effect; and the Legislature has chosen to commit such issues to the process of collective negotiations unless specifically precluded by statute. *Id.* at 10.

The advance payment to credit unions and annuity plans was "merely a detail in the administration of the employees' compensation package." *Id.*

In *State Troopers Fraternal Ass'n v. State*, App. Div. Dkt. Nos. A-1792-94T5 and A-2920-94T5 (3/27/96), certif. granted, the Appellate Division held that past practice required the State to pay retroactive salary increases to troopers who had retired before negotiations were completed, but who had worked during the period of retroactivity covered by the new agreement. The subsequent adoption of a regulation, *N.J.A.C. 4A:3-4.20*, denying retroactive pay increases to employees no longer on the State's payroll did not divest the employees of their vested right to retroactive payment for work previously done.

Under *N.J.S.A. 26:3-25.1*, a public health officer who has been employed for five years is entitled to be paid the maximum salary in his or her salary range. *Brown v. City*

of Jersey City, 289 N.J. Super. 394 (App. Div. 1996). However, an employee who has been promoted to a higher labor grade must serve five years before receiving the maximum pay in that grade.

In *Balgowan v. State of New Jersey*, 84 F.3d 656 (3rd Cir. 1996), a panel of the Third Circuit Court of Appeals held that NJDOT's project engineers and supervising engineers are not professional employees under the Fair Labor Standards Act and are thus entitled to overtime compensation when they work more than 40 hours in a week. However, that opinion was vacated and a rehearing was granted, 84 F.3d 667 (3rd Cir. 1996). In another overtime compensation case, the Court Clerk of Montclair Township was held to be an executive excluded from FLSA protections. *DeMiro v. Montclair Tp.*, ESX-L-7977-94 (5/9/96).

Tenure and Implied Contract Claims

Picogna v. Cherry Hill Tp. Bd. of Ed., 143 N.J. 391 (1996), reaffirms that a school board employee cannot achieve statutory tenure without serving for the statutory period. Thus, an assistant superintendent whose employment contract was wrongfully terminated before tenure accrued was not entitled to tenure.

In *Healy v. Fairleigh Dickinson Univ.*, 287 N.J. Super. 407 (App. Div. 1996), an Appellate Division panel rejected a claim that an administrator had acquired de facto tenure under a faculty handbook. The Court held inadmissible the opinion of an "expert" on academic tenure about the meaning of the handbook and concluded that tenure must be affirmatively granted.

In *Walsh v. State of New Jersey (Dept. of Public Advocate)*, 290 N.J. Super. 1 (App. Div. 1996), appeal pending, the Court held that an assistant public defender had an enforceable implied-in-fact contract to be promoted from an ADPD II to an ADPD I. Judge Skillman dissented, arguing in part that no such contract could exist since assistant public defenders by statute "serve at the pleasure" of their employer.

In *Jackson v. Georgia-Pacific Corp.*, 296 N.J. Super. 1 (App. Div. 1996), an Appellate Division panel rejected a handbook claim since the handbook did not contain any progressive discipline provision and the first paragraph under "Termination of Employment--Salaried Employees" stated that employment could be terminated at any time at the company's option. A disclaimer need not be set off or typed in bold print. Judge Conley wrote the opinion.

For an article looking at Supreme Court cases on terminations, see Alito, *Moving Toward For-Cause Terminations: Recognizing a Cause of Action Based On An Amorphous Public Policy*, *N.J. Law Journal*, pp. 985-989 (9/2/96).

Promotions

Brady v. DOP, 289 N.J. Super. 557 (App. Div. 1996), held that a police sergeant who passed a promotional examination for captain, but who appealed some evaluations of his answers, had a right to receive copies of the questions and answers and an adequate explanation of the grading decisions.

Right-to-Know Cases

The Appellate Division issued three decisions interpreting the Right-to-Know Law and the common law right to inspect public records. In *Keddie v. Rutgers, The State Univ.*,

286 *N.J. Super.* 285 (App. Div. 1996), certif. granted, 144 *N.J.* 377 (1996), the Court required Rutgers to give the AAUP information about its legal expenses in labor and employment cases. Similarly, in *Hunterdon Cty. PBA Local 188 v. Franklin Tp.*, 286 *N.J. Super.* 389 (App. Div. 1996), the Court ordered the employer to provide a union with copies of its bills for attorneys, arbitrators, or other professionals working on labor relations matters. But in *Home News v. Spotswood Bor. Bd. of Ed.*, 286 *N.J. Super.* 380 (App. Div. 1996), the Court held that a newspaper did not have a right to inspect budget planning documents.

Health Insurance

An Appellate Division panel held that a retired police officer is entitled to health insurance benefits under a contractual clause that was statutorily illegal at the time of its execution, but was statutorily permitted by the time of its enforcement. *Lakewood Tp. PBA Local #71 v. Lakewood Tp.*, App. Div. Dkt. No. A-5709-95T5 (10/23/96). This case may have implications for enforcing "just cause" clauses under the latest amendment to *N.J.S.A. 34:13A-5.3*, *supra* at p. 9.

Sick Leave Verification

Judge Lifland of the federal district court issued a decision addressing the constitutionality of a sick leave verification program adopted by the New Jersey Department of Corrections. *Cohen v. Barbo*, Civ. Action No. 95-892 (JCL) (D.N.J.) (7/19/96). The decision upheld the constitutionality of a home-confinement requirement, but held unconstitutional telephone contact and home visitation requirements absent standards and procedures for their implementation.

Drug Testing

An Appellate Division panel upheld the constitutionality of random drug testing of police officers. *New Jersey Transit PBA Local 304 v. New Jersey Transit Corp.*, 290 N.J. Super. 406 (App. Div. 1996), certif. granted 147 N.J. 259 (1996). This case rejects the holding of *FOP Newark Lodge No. 12 v. City of Newark*, 216 N.J. Super. 461 (App. Div. 1987) (requiring reasonable individualized suspicion).

Residency Requirements

Judge Weiss of the Essex County Law Division temporarily restrained the County from applying its residency requirement. *CWA v. Treffinger*, Dkt. No. ESX-L-1980-96 (3/22/96). He concluded that the plaintiffs would likely prove that employees working in the Sheriff and Prosecutor offices were not County employees and that the County was estopped from applying the residency requirements to its own employees since it had tolerated previous violations.

Entire Controversy Doctrine

Judge Wolin of the federal district court held that the entire controversy doctrine barred a union president from filing a federal lawsuit based on his federal constitutional rights after his union had filed an unfair practice charge with the Commission alleging that disciplinary actions against the president violated the Act and the First Amendment. *Kelly v. Borough of Sayreville*, Civ. Action No. 94-5460 (5/10/96), appeal pending. In *Neptune Tp. Bd. of Ed. v. Neptune Tp. Ed. Ass'n*, 293 N.J. Super. 1, 9 (App. Div. 1996), the Court stated that administrative agencies have authority to decide constitutional issues if the broader subject matter of a case is within the purview of the agency's authority.

Statute of Limitations

In *Keelan v. Bell Communications Research*, 289 N.J. Super. 531 (App. Div. 1996), the Court held that the CEPA statute of limitations begins to run on the date an employee stops working, not on the day an employee is notified that he or she will be discharged. The Court distinguished cases holding that the Title VII statute of limitations begins to run when an employee is officially notified that he or she has been denied tenure and thus will not be reappointed to teach during the next school year.