



**STATE OF NEW JERSEY
PUBLIC EMPLOYMENT RELATIONS COMMISSION**

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M E M O

To: Commissioners

From: Bob Anderson
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Re: Developments in the Counsel's Office Since May 25, 2000

Commission Cases

The Supreme Court has denied certification in *Randolph Bd. of Ed. v. Randolph Ed. Ass'n*, P.E.R.C. No. 99-45, 25 NJPER 14 (¶30005 1998), *rev'd and rem'd* 26 NJPER 143 (¶31055 App. Div. 2000). The Commission now has jurisdiction to consider whether increment withholdings from nonprofessional employees are based on performance reasons or disciplinary reasons. If a withholding is based on disciplinary reasons, N.J.S.A. 34:13A-29 mandates arbitration. A nonprofessional employee, unlike a teaching staff member, may not appeal a withholding to the Commissioner of Education.

Appeals have been filed in *Hillsborough Tp. and Hillsborough PBA Local No. 205*, P.E.R.C. No. 2000-82, 26 NJPER ____ (¶____ 2000), holding that the Township committed an unfair practice when it disciplined the PBA president for engaging in protected activity, and *City of Union City and Union City Employees Association*, P.E.R.C. No. 2000-89, 26 NJPER ____ (¶____ 2000), restraining arbitration of a grievance contesting the allegedly wrongful termination of a Civil Service employee.

Judge Anthony Parrillo has enforced the Commission's back pay order in *City of East Orange and East Orange Engineering Supervisory Personnel Ass'n*, H.E. No. 2000-5, 26 NJPER 87 (¶31034 2000), made final on January 11, 2000.

Other Cases

An Appellate Division panel has refused to award strike-related damages to a school board. *Middletown Tp. Bd. of Ed. V. Middletown Tp. Ed. Ass'n, App. Div. Dkt. No. 3525-98T3 (5/16/00)*. The claimed damages could not be awarded because they did not exceed the savings in teachers' salaries. The Court held that the Board could receive counsel fees from the Association, but not from individual Association members and representatives.

In *Grasing v. Borough of Palisades Park, App. Div. Dkt. No. A-2431-98T1 (5/16/00)*, the Court reversed a trial court injunction that had invalidated disciplinary actions because the employer had violated the Open Public Meetings Act.

In *Cahill v. City of E. Brunswick, ___ F.Supp. ____ (D.N.J. 2000)*, Judge Walls of the federal district court found that police officers working "extra-duty jobs" were employees of the City of New Brunswick rather than independent contractors for purposes of the Fair Labor Standards Act. The officers were assigned and supervised by the department; were armed and uniformed; were paid by the department (from funds paid by outside vendors); and were considered to have "on-call" status.

In *Bollinger v. Bell Atlantic, 330 N.J. Super. 300 (App. Div. 2000)*, the Court held that the LAD's statute of limitations barred a claim brought by an employee removed from full-time status and placed on disability nine years earlier. The Court discusses the "continuing violation" theory, but holds it does not apply in this case.

In *Ruggiero v. Delaware River Port Auth., App. Div. Dkt. No. A-2690-98T3 (5/2/00)*, an Appellate Division panel held that the Delaware River Port Authority was immune from a former employee's common law claim that he had been discharged for union activities. The plaintiff was a union official and a toll taker who, along with other toll takers, shut down his booth on the Benjamin Franklin Bridge to protest the presence of asbestos in the tunnels toll takers had to take to and from their booths. While other toll takers were suspended for three days, Ruggiero was fired. The Appellate Division concluded that Pennsylvania, unlike New Jersey, did not recognize a common-law cause of action for employees covered by a collective negotiations agreement and alleging that they were wrongfully discharged for union activity and protesting unsafe working conditions. Absent such a cause of action in both states, the plaintiff could not sue a bi-state agency. The Court did not consider, and the parties apparently did not argue, that the laws of both Pennsylvania and New Jersey prohibit anti-union discrimination against public employees.

In *Fleming v. Correctional Healthcare Solutions, Inc., ___ N.J. ____ (2000)*, the Supreme Court held that the CEPA statute prohibits an employer from firing an employee for "insubordination" because the employee did not follow the chain of command in reporting illegal or unethical workplace conduct. The employer directed that complaints be submitted to a lower-level supervisor, but that supervisor had already ignored the same complaints. The Court cites a Bruce Springsteen song, *Reason to Believe*.

In another CEPA case, a career civil service employee who filed a CEPA claim was not precluded from appealing a disciplinary action to the Merit System Board simply because he alleged that he was disciplined for the same retaliatory reasons alleged in the CEPA action. *Scouler v. City of Camden*, ___ *N.J. Super.* ___ (*App. Div.* 2000). The “cause of action” at a civil service disciplinary hearing is not the employee’s claim that the employer has taken retaliatory action, but rather the employer’s claim that the employee was guilty of misconduct.