



STATE OF NEW JERSEY
PUBLIC EMPLOYMENT RELATIONS COMMISSION

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July 19, 2001

MEMORANDUM

TO: Commissioners

FROM: Bob Anderson
General Counsel

RE: Report on Developments in the Counsel's Office
Since June 28, 2001

Commission Appeals

No activity last month.

Other Cases

The New Jersey Supreme Court has abolished the "no-work, no pay" rule and has upheld an arbitration award requiring the employer to pay an employee for overtime opportunities he lost when the employer violated the contractual provision on overtime allocation. State of New Jersey v. Local 195, IFPTE, _____ N.J. _____ (2000) (copy attached). The Court finds that the arbitrator's interpretation of the contract was reasonably debatable and that no express statutory or regulatory authority is needed to allow the parties to agree to a monetary remedy for violating a contractual provision on a term and condition of employment. The New Jersey Employer-Employee Relations Act implicitly provides such authority by requiring negotiations over terms and conditions of employment. The Court further reasons that the "no-work, no-pay" doctrine, originating in an 1859 case, is an anachronism given modern-day labor jurisprudence. Justice Zazzali wrote the majority opinion which was joined by three other justices. Justice Verniero agreed that the "no work, no pay" doctrine should be abolished, but would have rejected the arbitrator's contractual interpretation. Justice LaVecchia wrote a dissenting opinion, joined by Justice Coleman, disagreeing with each element of the analysis in the majority opinion.

In McCann v. Clerk of City of Jersey City, 167 N.J. 311 (2001), the Court held that a mayoral candidate was disqualified from serving as mayor by his convictions of wire fraud, mail fraud, and tax offenses. The forfeiture statute did not apply because his convictions were based on private sector conduct, but the Faulkner Act applied because his crimes involved moral turpitude.

In Ames v. Haddonfield Borough, App. Div. Dkt. No. A-5388-99T5 (6/19/01), the Court allowed a police officer to file an untimely appeal under N.J.S.A. 40A:14-150 contesting his demotion from sergeant to patrol officer. The Court noted that the fault in failing to file a timely appeal lay at the doorstep of the officer's lawyer and that the employer had timely notice of the intent to appeal and suffered no prejudice. In addition, the employer rejected a hearing officer's finding that the charges were not proved; demoted the officer on a record that was unclear as to what evidence was considered; and apparently did not give the officer an opportunity to appear and be heard. Finally, the Court noted that by the time the officer was convicted, he had sued the employer under CEPA and the employer's defense to that action benefitted by the conviction.

An Appellate Division panel has held that a Civil Service employee did not have a right to appeal a five-day suspension to the Merit System Board. In re McRae, App. Div. Dkt. No. A-4885-99T1 (6/12/01). The employee argued that he should have the right to appeal the minor disciplinary determination because it was consolidated with a subsequent 20 day suspension for a departmental hearing. But under Civil Service law, a five day suspension is a minor disciplinary action that is not appealable as of right to the Merit System Board unless it results in an employee having been suspended for more than 15 days in a year. The Court stresses that the five-day suspension preceded the 20-day suspension and states that the consolidated hearing "represents an accommodation to the parties, not a basis for departing from the statutory scheme of rights of appeal."

In Atlantic City Ed. Ass'n v. Atlantic City Bd. of Ed., App. Div. Dkt. No. A-4015-99T2 (6/26/01), the Court affirmed a State Board of Education decision holding that the school board violated the tenure laws by the way it reduced its custodial work force. The board abolished the position of head custodian. It then transferred some head custodians to other custodial positions at lower salaries while terminating other head custodians with more seniority than other custodians retained. The Court held that the tenure statute covered the general classification of janitorial services and that the board could not reduce the salaries of the head custodians or lay them off out of seniority.