



STATE OF NEW JERSEY  
PUBLIC EMPLOYMENT RELATIONS COMMISSION

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December 13, 2001

MEMORANDUM

TO: Commissioners

FROM: Bob Anderson  
General Counsel

RE: Report on Developments in the Counsel's Office Since November 29, 2001

Commission Appeals

An appeal has been filed in Wall Tp. and Wall Tp. PBA Local 234, P.E.R.C. No. 2002-22, \_\_ NJPER \_\_ (¶\_\_\_\_ 2001). The Commission declined to restrain arbitration over a claim that the employer deviated from its own promotional list - - compiled based on the employer's criteria - - in making promotions.

The Appellate Division denied a stay in North Bergen Tp. Bd. of Ed. and North Bergen Federation of Teachers, P.E.R.C. No. 2002-12, 27 NJPER 370 (¶32135 2001), stay denied, P.E.R.C. No. 2002-31, \_\_ NJPER \_\_ (¶\_\_\_\_ 2001), app. pending, App. Div. Dkt. No. A-0972-01T2. The Commission held that a school board secretary had been transferred to another worksite for disciplinary reasons and ordered her restored to her previous position.

Other Cases

The Appellate Division panel has dismissed a probationary employer's lawsuit against the Turnpike Authority for wrongful termination. Szewczuk v. New Jersey Turnpike Auth., App. Div. Dkt. No. A-6691-99T3 (10/17/01). The plaintiff was a toll collector who was notified on May 19, 1992 that he would be terminated effective May 24, 1992, the last day of his six month probationary period, because of his "inability to satisfactorily complete the probation period." The Appellate Division panel rejected plaintiff's claim that he was terminated before the end of the probation period and that he had a contractual right to work the full probation period despite

poor performance. It held that at-will public sector employees cannot claim implied contract rights under Woolley v. Hoffmann-La Roche, Inc., 99 N.J. 284 (1985), and that the notion of a fixed term for a probationary public policy offends public policy.

In Hess v. Town of West New York, App. Div. Dkt. No. A-5294-99T2 (10/11/01), the Court held that a police officer was not entitled to recover counsel fees after being found not guilty of federal criminal charges accusing him of bribery, extortion and participation in a criminal conspiracy. Summary judgment was properly granted against the officer because he did not submit any facts showing that the charges arose out of or were directly related to the lawful exercise of police powers in furtherance of official duties, as required by N.J.S.A. 40A:14-155.

In Troise v. Extel Communications, \_\_\_ N.J. Super. \_\_\_ (App. Div. 2001), an Appellate Division panel held that a six-year statute of limitations applied to lawsuits filed by employees against their employers under the Prevailing Wage Act, N.J.S.A. 34:11-56.25 et seq. That law allows two years to file an administrative protest, but does not specify a deadline for filing a lawsuit.

In City of Gloucester v. PBA Local 40 (Gloucester Unit), App. Div. Dkt. No. A-6907-99T5 (11/02/01), an Appellate Division panel affirmed a trial court order vacating an arbitration award. The arbitrator held that employees retiring early in a calendar year were entitled to be paid for all vacation and sick leave days for that year. The trial court and the Appellate Division found that the award was not based on a reasonably debatable interpretation of contract provisions and that payment of unearned vacation and sick leave benefits offends public policy.

In McCurrie v. Town of Kearny, 344 N.J. Super. 470 (App. Div. 2001), a municipal clerk/ administrator entered an agreement with the Town under which he resigned six months before his term expired and in exchange received \$27,500 plus accrued vacation time. The Court held that the Town properly adopted this agreement by resolution, rather than ordinance, since the payment was not a form of "salary." The Court also held that the clerk/administrator could not receive payment for related counsel fees since the agreement did not arise out of his official duties but was for his personal benefit.

In Delaware River and Bay Authority v. York Hunter Construction, Inc., 344 N.J. Super. 361 (Ch. Div. 2001), the Chancery Division sets forth and applies the standards for granting injunctions. The opinion focuses on the principle that a loss of money is not considered an irreparable injury. The question addressed is whether that is so even if it appears that the money may not be collectible. The Court holds that insolvency itself is not a sufficient basis for granting an injunction.