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December 20, 2001

MEMORANDUM

TO: Commissioners

FROM: Bob Anderson
General Counsel

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

Oral argument has been scheduled in Teaneck Tp. and Teaneck FMBA Local 42, P.E.R.C. No. 2000-33, 25 NJPER 450 (¶30199 1999). This is the first appeal of a Commission decision reviewing an interest arbitration award. The work schedule part of the award presents the primary issue on appeal.

Judge Irenas of the New Jersey federal district court has enforced an arbitration award ordering back pay for an employee wrongfully denied a promotion. Catalyst Employees' Ass'n v. Air Products and Chemicals Inc., ___ F. Supp. ___, 168 LRRM 2701 (D. N.J. 2000). The employer had argued that the arbitrator lacked authority to order back pay since grievance sought only a promotion; but the Court found that the parties' post-hearing briefs gave the arbitrator authority to impose an appropriate remedy for any violation found. The Court also reasoned that back pay was the natural and usual remedy for an improper promotion denial.

In Williams v. The Port Authority of New York and New Jersey, ___ N.J. Super. ___ (App. Div. 2001), Judge Pressler wrote an opinion holding that the New Jersey Division of Workers' Compensation properly exercised subject matter jurisdiction over a claim filed by a Port Authority employee. The employee claimed that he had been subjected to toxic substances on the job from February 1973 to 1994; he worked the first four months of that period in New Jersey and the rest of the time in New York. The Court recognized that subject matter jurisdiction could not be based on the bi-state status of the Authority alone, but concluded that the four months of New Jersey employment was substantial enough to justify New Jersey jurisdiction. Judge Wefing dissented.

In National Ass'n of Letter Carriers v. United States Postal Service, ___ F.3d ___, 168 LRRM 2903 (3rd Cir. 2001), Judge Greenberg (formerly of the New Jersey Appellate Division) wrote an opinion upholding an arbitration award finding just cause for a postal employee's discharge. The employee was terminated for filing a false workers' compensation claim, a charge the arbitrator found merited despite a ruling of the workers' compensation tribunal granting benefits. The Court found that the agency ruling was not preclusive and pointed out that had the union prevailed in obtaining preclusive effect in this case, such effect would also have to be applied in cases where the agency denied benefits yet the employee still sought to overturn a termination.

REA:aat