



STATE OF NEW JERSEY  
PUBLIC EMPLOYMENT RELATIONS COMMISSION

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February 21, 2002

MEMORANDUM

TO: Commissioners

FROM: Bob Anderson  
General Counsel

RE: Report on Developments in the Counsel's Office Since January 31, 2002

Commission Appeals

The City of Newark elected not to ask the Supreme Court for certification in City of Newark and Association of Government Attorneys, P.E.R.C. No. 2000-100, 26 NJPER 289 (¶31116 2000), aff'd \_\_\_ N.J. Super. \_\_\_ (App. Div. 2001). The Appellate Division agreed with the Commission that the City's lowest-level staff attorneys could seek representation.

The New Jersey School Boards Association has been granted leave to file an amicus curiae brief in Lumberton Ed Ass'n and Lumberton Tp. Bd. of Ed., P.E.R.C. No. 2002-13, 27 NJPER 372 (¶32136 2001) app. pending App. Div. Dkt. No. A-1328-01T5. The Commission held that the Board committed an unfair practice by refusing to negotiate over the order in which employees take unpaid and paid leaves of absence; the Commission rejected the Board's argument that the FMLA preempted negotiations over that issue. I understand that the NJEA will also be seeking amicus curiae status.

Other Cases

In Flagg v. Essex Cty. Prosecutor, \_\_\_ N.J. \_\_\_ (2002), the Supreme Court addressed the standard for reviewing a county prosecutor's decision not to apply for a waiver of the forfeiture provision of N.J.S.A. 2C:51-2 when an employee has been convicted of a disorderly or petty disorderly persons offense. The Court held that the prosecutor must review each request case-by-case

and not abuse his or her discretion in denying a request. The Attorney General is to issue guidelines for seeking waivers.

In Barker v. Brinegar, \_\_\_ N.J. Super. \_\_\_ (App. Div. 2002), the Court declined to hold that an arbitration award was entitled to collateral estoppel in a personal injury suit against an insurer for unpaid medical bills. A similar result was reached in Pace v. Kuchinsky, \_\_\_ N.J. Super. \_\_\_ (App. Div. 2002).

In Brown v. City of Bordentown, \_\_\_ N.J. Super. \_\_\_ (App. Div. 2002), an African-American police sergeant claimed that the City and the police commissioner discriminatorily hired a white man rather than the sergeant as police chief. The Appellate Division panel held that the City was not entitled to absolute immunity because the commissioner was its agent and it remanded for a hearing on whether the commissioner was acting in an administrative or executive capacity, and thus subject to liability himself, or whether he was acting as a legislative capacity, and thus immune from suit.

In re Tenure Hearing of Vitacco, \_\_\_ N.J. Super. \_\_\_ (App. Div. 2002), held that a superintendent forfeited his job as of the date of his conviction of filing false federal income tax returns and other charges. Given this automatic forfeiture, the Commissioner of Education properly denied the superintendent a tenure hearing.

In South Jersey Catholic Teachers Org. v. Diocese of Camden, \_\_\_ N.J. Super. \_\_\_ (Chan. Div. 2000) (approved for publication in 2002), Judge Gibson upheld the right of lay teachers in two Catholic schools to choose new bargaining representatives after the expiration of a contract between their employer and a previous union.

In Hancock v. Borough of Oaklyn, \_\_\_ N.J. Super. \_\_\_ (App. Div. 2002), the Court dismissed CEPA claims filed by two police officers. The Court found no cognizable acts of retaliation; neither officer was discharged or demoted and the allegations of retaliation had no impact on their pay or rank.

REA:aat