



STATE OF NEW JERSEY
PUBLIC EMPLOYMENT RELATIONS COMMISSION

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March 20, 2002

MEMORANDUM

TO: Commissioners

FROM: Bob Anderson
General Counsel

RE: Report on Developments in the Counsel's Office Since February 28, 2002

Commission Appeals

The New Jersey Education 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.

In City of Somers Point and Mainland PBA #77 and April Van Daley, P.E.R.C. No. 2002-45, ___ NJPER ___, motion for leave to appeal pending, the Commission declined to stay an unfair practice hearing given a pending court action involving related CEPA and EEO claims. The employer then unsuccessfully sought an emergency stay from the Appellate Division.

Other Cases

In Magnolia Bd. of Ed. and Magnolia School Ed. Ass'n, App. Div. Dkt. No. A-3117-00T1 (2/20/02), an Appellate Division panel vacated a \$60,000 fine imposed against the MSEA for a four-day strike, but affirmed an attorney's fee award of \$987 to the Board.

The trial court had imposed a fine against the MSEA of \$5,000 for each day teachers and custodians were on strike, but did not properly consider the MSEA's ability to pay such fines as required by R. 1:10-3. The MSEA showed that it had a negative net worth and expected a net loss for the next year and that the NJEA had not agreed to pay any fines imposed against the MSEA. The trial court, however, held that the affront to the judicial system outweighed the effect of the fines on the MSEA and added:

The minuscule \$15,000 a day didn't even work. Didn't work. So how can you say it's excessive?

The Appellate Division reversed the \$60,000 in fines against the MSEA, reasoning that the object of a civil proceeding under R. 1:10-3 is not to inflict punishment, but to compel compliance. The Court found that the fines were improperly imposed retroactively to cover the first three days of the strike; did not take into account the MSEA's ability to pay; and were improperly based on the concept that any sanction that did not work cannot be characterized as excessive. The Court, however, upheld the award of attorney's fees for a hearing which was strike-related and which was substantially necessitated by the MSEA's not having its witnesses present at an earlier hearing.

In Green v. City of Long Branch, App. Div. Dkt. No. A-3400-00T1 (2/19/02), the Appellate Division panel confirmed a grievance arbitration award requiring the employer to pay \$86,000 to one former employee and \$100,000 to another former employee given a contractual provision mandating payment for accumulated sick time on retirement. The Court held that the arbitrator's contractual interpretation was reasonably debatable and it rejected an argument that the arbitrator did not properly consider public policy and fiscal concerns.

In Inganamort v. Police and Firemen's Retirement System, App. Div. Dkt. No. A-2542-00T5 (2/19/02), a PFRS decision excluded from pension calculations the extra compensation (8% of base salary) called for by a collective agreement and paid to police officers for assuming positions as "training officers" after 24 years of service. The PFRS concluded that the duties required by that position were illusory and the payments constituted individual salary adjustments granted primarily in anticipation of retirement. An Appellate Division panel affirmed, relying on Wilson v. PFRS Bd. of Trustees, 322 N.J. Super. 477 (App. Div. 1998). The Court also rejected a claim that the training officer clause of the collective agreement was protected by the grandfather provision of N.J.A.C. 17:4-4.1.

REA:aat