



STATE OF NEW JERSEY
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May 23, 2002

MEMORANDUM

TO: Commissioners

FROM: Bob Anderson
General Counsel

RE: Report on Developments in the Counsel's Office Since April 25, 2002

Commission Appeals

The Appellate Division has affirmed Paterson State-Operated School District and Paterson Ed. Ass'n, P.E.R.C. No. 2001-42, 27 NJPER 126 (¶32038 2001), App. Div. Dkt. No. A-3600-00T1 (5/23/02) (copy attached). The Commission declined to restrain arbitration of a grievance asserting that a school security guard was entitled to work during evening school hours at overtime rates. The employer had instead given this work to a security guard employed by a subcontractor. The Court affirmed on the basis of the Commission's "comprehensive" decision.

An appeal has been filed in Union Tp. and FMBA Local No. 46, FMBA Local No. 246 and PBA Local No. 69, I.R. No. 2002-7, 28 NJPER 86 (¶33031 2001), recon. den. P.E.R.C. No. 2002-55, ___ NJPER ___ (¶_____ 2002), app. pending App. Div. Dkt. No. A-4249-01T1. The employer changed health insurance carriers, which resulted in a reduction in health benefit levels. A Commission designee issued an interim relief order requiring the employer to maintain a fund ensuring that employees would not lose benefits during the litigation, but did not order the employer to rescind its arrangements with the new insurance carrier. A settlement conference will be conducted by Judge Gaynor on June 4.

Other Cases

In Loigman v. Middletown Tp., App. Div. Dkt. No. A-4503-00T2 (4/10/02), the Court held that the compensatory time cards of Middletown police officers are public records subject to disclosure. The Court rejected an argument that the cards are personnel records exempt from disclosure. Any confidential police or personal information can be redacted.

In re Falkowski, App. Div. Dkt. No. A-1206-00T3 (2/13/02), upheld a back pay award issued by the Merit System Board in favor of an improperly dismissed police officer. The Court held that the employer was not entitled to have the amount of back pay reduced by the money earned by the officer as a security guard since he had been working as a guard before he lost his job as a police officer. See N.J.A.C. 4A:2-2.10(d)(3).

In Prunetti v. Mercer Cty. Freeholders Bd., 350 N.J. Super. 72, 136-138 (Law Div. 2001), Judge Feinberg of the Mercer County Superior Court considered the validity of an administrative code adopted by the Freeholders pursuant to N.J.S.A. 40:41A-125. That code designated the Sheriff as the employer of all employees of the Sheriff's Office and the representative of the County for collective bargaining. The County Executive asserted that this provision conflicted with his authority to negotiate contracts for the County. The Court held that the code had to be modified to include both the Sheriff and the County as collective negotiations agents. The Court relied on Bergen Cty. Sheriff and PBA Local 134, P.E.R.C. No. 84-98, 10 NJPER 168 (¶15083 1984), holding that the County and the Sheriff are joint employers for purposes of collective bargaining. It also held that the joint-employer approach did not infringe upon the County Executive's power under N.J.S.A. 40:41A-36 to negotiate contracts for the County; it merely distinguished collective negotiation agreements from other contracts and brought all necessary parties to the bargaining table. The Court also invalidated another code section which called for the Freeholders to set salaries for employees beyond the top-level employees specified in N.J.S.A. 40:41A-100d; to the extent the code went beyond the statute, it trespassed upon the County Executive's power to set salaries for other employees.

In Mancini v. Teaneck Tp., 349 N.J. Super. 527, 556-560 (App. Div. 2002), the Court found a continuing violation in a sexual harassment case brought by a female police officer against her department. The Court thus permitted the plaintiff to litigate and recover on incidents of harassment outside the statutory limitations period.

In Stanziale and CWA, Local 1040, 2002 N.J. Super. Lexis 198 (App. Div. 2002), an Appellate Division panel held that N.J.S.A. 26:3-25.1 applies to the Monmouth County Board of Health. This statute mandates that certain employees of any "board of health" receive the maximum salary in their salary ranges after five years of service. The Court held that Monmouth County's autonomous health board was different from Middlesex County's subordinate health department and was therefore covered by the salary statute.