



STATE OF NEW JERSEY
PUBLIC EMPLOYMENT RELATIONS COMMISSION

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June 20, 2002

MEMORANDUM

TO: Commissioners

FROM: Bob Anderson
General Counsel

SUBJECT: Report on Developments in the Counsel's Office Since May 30, 2002

Commission Cases

The employer has asked the Appellate Division to stay implementation of the interest arbitration award upheld in City of Clifton and Clifton FMBA Local 21, P.E.R.C. No. 2002-56, 28 NJPER 201 (¶33071 2002). The Commission declined to stay implementation in a decision issued at the May meeting. City of Clifton and Clifton FMBA Local 21, P.E.R.C. No. 2002-74, ___ NJPER ___ (¶_____ 2002) app. pending

Other Cases

In Donofry v. Autotote Systems, Inc., 350 N.J. Super. 276 (App. Div. 2002), the Court held that the employer violated CEPA when it discharged an employee who had informed senior management that unlicensed technicians were working at a facility, thus triggering a report to the Casino Control Commission that threatened the employer's casino license. The Court's opinion discusses at length the burdens of proof under CEPA in pretext and mixed motive cases. It concludes that the plaintiff in this pretext case has to prove by a preponderance of the evidence that "protected whistleblowing activity was a determinative or substantial, motivating factor in defendant's decision to terminate him and that it made a difference. Plaintiff need not prove that his whistleblowing activity was the only factor in the decision to fire him." Id. at 296.

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