



STATE OF NEW JERSEY
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December 12, 2002

MEMORANDUM

TO: Commissioners

FROM: Bob Anderson
General Counsel

SUBJECT: Report on Developments in the Counsel's Office Since October 31, 2002

Commission Cases

_____ The Supreme Court has granted the employer's petition for certification in Teaneck Tp. and FMBA Local No. 42, P.E.R.C. No. 2000-33, 25 NJPER 450 (¶30199 1999), aff'd in part, rev'd and remanded in part, 353 N.J. Super. 289 (App. Div. 2002). The Court has also granted a stay of further interest arbitration proceedings pending Supreme Court review. The issue before the Court is whether the FMBA's proposal for a 24/72 work schedule is mandatorily negotiable.

A motion for stay pending appeal was denied in part and granted in part in Middlesex Cty. Sheriff and Eckel, P.E.R.C. No. 2003-4, 28 NJPER 308 (¶33115 2002), app. pending, App. Div. Dkt. No. A-000057-02T2. The Commission ordered the Sheriff to rescind a reassignment, reduce a suspension, and post a notice as remedies for his violation of N.J.S.A. 34:13A-5.4a(1) and (5). The Appellate Division stayed the posting of the notice, but otherwise denied the motion.

A motion for a stay pending appeal has been filed in Morris Cty. and Morris Council No. 6, P.E.R.C. No. 2003-22, 28 NJPER 421 (¶33154 2002), app. pending, App. Div. Dkt. No. A-000837-02T1. The Commission ordered the County to provide the majority representative with the home addresses of negotiations unit employees.

An appeal has been filed in Morris Cty. and CWA, Local 1040, AFL-CIO, P.E.R.C. No. 2003-32, ___ NJPER ___ (¶_____ 2002), app. pend., App. Div. Dkt. No. A-1575-02T3. This appeal also contests a Commission order to provide the majority representative with the home addresses of all employees within its negotiations unit.

A motion for leave to appeal nunc pro tunc has been granted in Irvington Bd. of Ed. and Gwendolyn Smith, P.E.R.C. No. 2003-5, 28 NJPER 334 (¶33116 2002), app. pending, App. Div. Dkt. No. A-000407-02T5. The Commission ordered the Board to stop repudiating a settlement agreement and to provide a teacher with a letter indicating it had removed certain evaluations from her personnel file.

Other Cases

Clifton FMBA Local 21 has filed an action in Superior Court in Passaic County claiming that the City of Clifton violated an interest arbitration award by not placing ambulance drivers and EMTs on a 24/72 work schedule. See City of Clifton and Clifton FMBA Local 21, P.E.R.C. No. 2002-56, 28 NJPER 201 (¶33071 2002), app. pending, App. Div. Dkt. No. A-4573-01T2. While the Complaint names the Commission as a defendant, it neither makes any allegations nor seeks any relief against the Commission.

In McCurrie v. Town of Kearny, ___ N.J. ___ (2002), rev'g in part, 344 N.J. Super. 470 (App. Div. 2001), our Supreme Court held that the Town could legally pay the counsel fees spent by a former municipal clerk and township administrator in defending the legality of the severance package he negotiated with the Town. The Court held that the Town was not required by N.J.S.A. 40A:9-134.1 to pay the counsel fees because the severance package did not directly relate to the performance of his duties. Nevertheless, the Court concluded that the Town had common law authority and a moral obligation to pay legal expenses incurred as a result of the employee's acting in good faith in the course of official duties in a matter in which the municipality had an interest. Those conditions were met since the Town and the former clerk administrator agreed that the public interest and the efficiency of the clerk and administration offices would be best served by his surrendering his statutory and contractual terms of office and letting a new political majority replace him.

In International Union of Operating Engineers, Local 542 v. Delaware River Joint Toll Bridge Commission, ___ F.3d ___ (3d. Cir. 2002), the Third Circuit Court of Appeals held that the Bridge Commission need not comply with New Jersey collective bargaining laws because the New Jersey and Pennsylvania legislature had not expressed a clear intent to impose their labor laws upon it. The Court rejects the approach of the New Jersey Supreme Court in International Union of Operating Engineers, Local 68 v. Delaware River & Bay Auth., ___ N.J. ___ (1997), which had held that bi-state compacts could be modified by "complementary and parallel" collective negotiations schemes adopted by both states.

An appeal has been filed in Port Authority and Union of Automotive Technicians, Local 563. The trial division of the Superior Court upheld a decision of the Port Authority Employment Relations Panel. That decision held that the Authority properly discharged an employee who violated a second chance agreement.

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