



STATE OF NEW JERSEY
PUBLIC EMPLOYMENT RELATIONS COMMISSION

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December 19, 2002

MEMORANDUM

TO: Commissioners

FROM: Robert E. Anderson
General Counsel

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

Commission Cases

The employer has filed an appeal in Hunterdon Cty. and CWA Local 1034, P.E.R.C. No. 2003-24, NJPER ___ (¶___ 2002). The Commission held that under the new law amending N.J.S.A. 34:13A-5.5, the employer was required to deduct representation fees from the paychecks of employees in CWA's negotiations unit. The employer will assert on appeal that this new law is unconstitutional and that in the alternative the Commission should have required negotiations after the effective date of the amendment.

An Appellate Division panel has stayed the Commission's order 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 had ordered the employer to disclose the home addresses of negotiations unit employees to their majority representative.

Other Cases

The Commission's counsel staff represents the Port Authority Employment Relations Panel (PAERP) when its decisions are challenged in New Jersey courts. Bergen County Superior Court Judge Jonathan Harris has affirmed a PAERP decision which dismissed Improper (i.e., unfair) Practice charges filed by the Port Authority Police Detectives' Endowment Association against the Port Authority of New York and New Jersey. In re Port Authority Police Detectives'

Endowment Association and Port Authority of New York and New Jersey, Docket No. BER-L-3412-02. Don Horowitz argued on behalf of the PAERP.

The United States Supreme Court has reaffirmed the traditional labor relations principle that questions of procedural arbitrability, including timeliness, are for an arbitrator to resolve absent an agreement to the contrary. Howsam v. Dean Witter Reynolds, Inc., ___ U.S. ___ (2002). A rule of the National Association of Securities Dealers stated that no dispute “shall be eligible for submission to arbitration...where six (6) years have elapsed from the occurrence or event giving rise to the dispute.” The Court held that the applicability of this time limit was a matter for the arbitrator rather than a court. Other questions of procedural arbitrability include notice, waiver, estoppel and conditions precedent to an obligation to arbitrate.

In Taylor v. International Maytex Tank Terminal, ___ N.J. Super. ___, 2002 N.J. Super. LEXIS 473 (App. Div. 2002), a plaintiff in a LAD suit claimed that a racially hostile work environment had caused him to leave his employment and suffer emotional distress. He sought damages for his economic losses from leaving work and his emotional distress as well as punitive damages. After he left his employment, the employer discovered that he and his supervisor had agreed to lie about their involvement in an overflow of a toxic gasoline additive from a storage tank. Applying the after-acquired evidence doctrine, the Court concluded that the plaintiff would have been fired the day the employer learned of the cover-up and granted summary judgment barring the plaintiff from seeking reinstatement or the recovery of economic losses incurred after that date. The Court, however, denied summary judgment to the extent the plaintiff sought non-economic and punitive damages since these remedies do not have a direct nexus to a plaintiff’s status as an employee and may be necessary to deter forms of discrimination outlawed by statutes.

REA:aat