



**STATE OF NEW JERSEY  
PUBLIC EMPLOYMENT RELATIONS COMMISSION**

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May 22, 2003

MEMORANDUM

TO: Commissioners

FROM: Robert E. Anderson  
General Counsel

SUBJECT: Report on Developments in the Counsel's Office Since April 24, 2003

On May 1, 2003, the Executive Commission on Ethical Standards approved PERC's Code of Ethics adopted by the Commission last year. A copy is attached.

Commission Cases

\_\_\_\_\_ The Board has appealed Flemington-Raritan Reg. Bd. of Ed and Flemington-Raritan Education Association, P.E.R.C. No. 2003-64, \_\_ NJPER \_\_ (¶\_\_\_\_\_ 2003). The Commission declined to restrain binding arbitration of a grievance contesting the withholding of an increment from a payroll secretary. The Board had asserted that the withholding was based on evaluative reasons, but the Commission held that the parties could legally agree to arbitrate all withholdings involving nonprofessional staff.

An appeal has been filed in City of Newark and Police Superior Officers' Ass'n, P.E.R.C. No. 2003-68, \_\_ NJPER \_\_ (¶\_\_\_\_\_ 2003). The Commission declined to find illegal an arbitration award indemnifying a police officer ordered to pay a judgment for assault in a civil suit. The Commission held that the City's claim that the award violated public policy had to be raised in a court action seeking to vacate the award.

Oral argument has been scheduled for June 4, 2003 in New Jersey Highway Authority and IFPTE Local 193 (Toll Supervisors of America), AFL-CIO, P.E.R.C. No. 2002-76, 28 NJPER 261 (¶33100 2002), app. pending, App. Div. Dkt. No. A-6397-01T3. The Commission declined to restrain arbitration of a grievance asserting that supervisors at the Toms River toll plaza should not have been assigned to relieve toll collectors on the midnight shift. Don Horowitz will represent the Commission.

The Appellate Division has dismissed an appeal in Irvington Bd. of Ed. and Gwendolyn Smith, P.E.R.C. No. 2003-5, 28 NJPER 334 (¶33116 2002), 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. Smith did not file a timely brief.

In Middletown PBA Local 124 v. Middletown Tp., Dkt. No. L-4953-01, Judge Lehrer ordered arbitration of a dispute asserting that the Township could not change retiree co-pays. The Court, invoking its power under N.J.S.A. 2A:24-5, ordered the Commission to appoint an arbitrator and ordered the Township to arbitrate the merits of the issues presented. Don Horowitz represented the Commission and explained the Commission's grievance arbitration procedures.

In Hunterdon Cty. and CWA Local 1034, P.E.R.C. No. 2003-24, 28 NJPER 433 (¶33159 2002), app. pending, App. Div. Dkt. No. A-001869-02T5, the Commission applied the new statute authorizing deductions of representation fees absent a negotiated agreement and ordered the County to begin payroll deductions. An appeal is pending. A group of representation fee payers represented by the National Right to Work Foundation has moved for leave to file an amicus curiae brief.

#### Other Cases

In Sea Bright Tp. Police Officer Kevin Lovgren v. Chief, App. Div. Dkt. No. A-3840-01T3 (4/08/03), the trial court judge vacated a two-day suspension imposed against a police officer for not being home when a superior officer came to verify his sick leave. The officer had been briefly absent in order to pick up his son and purchase medications. The judge found that no discipline was warranted absent any evidence that the officer was not sick or that other officers had been disciplined for brief absences from home. The Appellate Division agreed with his analysis and held that he properly relied on progressive discipline concepts.

In New Jersey State PBA v. Egg Harbor Tp., Dkt. No. ATL-C-5-03, ATL-C-8-03 (4/22/03), Presiding Judge Seltzer confirmed a grievance arbitration award requiring the Township to pay police officers for unused sick and vacation days upon retirement. The judge found that the arbitrator's interpretation of the contractual provisions was reasonably debatable and thus rejected the employer's contention that it had a contractual right to pro-rate leaves based on the anniversary date of the year the officer left employment. The judge also rejected the employer's argument that the arbitrator was required to seek evidence concerning the fiscal

impact of the award when the employer had not presented any such evidence. South Plainfield Bd. of Ed. v. South Plainfield Ed. Ass'n, 320 N.J. Super. 281 (App. Div. 1999), certif. den. 161 N.J. 332 (1999), requires that a grievance arbitrator consider the fiscal impact of an award if evidence is presented, but does not require parties to introduce such evidence.

In Ganges v. Burlington Cty., App. Div. Dkt. No. A-5849-01T5 (4/17/03), a corrections captain filed a lawsuit challenging a three-day suspension and seeking a de novo hearing. The captain had no statutory right to contest the suspension and was not covered by any collective negotiations agreement. The trial judge held that she had no constitutional right of access to the courts for a de novo hearing for this minor disciplinary action, but the Appellate Division remanded the case for further findings in light of Cermele v. Lawrence Tp., 260 N.J. Super. 45 (App. Div. 1992), holding that a municipal construction official had a right to a de novo hearing concerning his three-day suspension.

REA:aat  
Attachments