



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

PO Box 429
TRENTON, NEW JERSEY 08625-0429

ADMINISTRATION/LEGAL
(609) 292-9830
CONCILIATION/ARBITRATION
(609) 292-9898
UNFAIR PRACTICE/REPRESENTATION
(609) 292-6780

For Courier Delivery
495 WEST STATE STREET
TRENTON, NEW JERSEY 08618
FAX: (609) 777-0089

July 17, 2003

MEMORANDUM

TO: Commissioners

FROM: Robert E. Anderson
General Counsel

SUBJECT: Report on Developments in the Counsel's Office Since June 26, 2003

New Laws

Two new laws have been enacted changing the New Jersey Employer-Employee Relations Act. Copies of the new laws are attached.

One new law, P.L. 2003, c. , supplements the Act by adding provisions that prohibit school boards and other educational employers from unilaterally imposing their contract offers. Previous case law had allowed unilateral impositions of last best offers after the parties had negotiated in good faith to impasse. The new act also establishes a super conciliation process to ensue after a fact-finding report has issued.

The other new law, P.L. 2003, c. , amends N.J.S.A. 34:13A-5.3 by permitting the State and the majority representatives of its employees (except troopers) to enter contracts requiring binding arbitration of all major disciplinary disputes. This new law overrides the prohibition of arbitrating a disciplinary dispute when there is an alternate statutory appeal procedure, such as an appeal to the Merit System Board.

The Legislature has also amended the State Health Benefits Act to permit contracts between the State and its majority representatives to deny the option of traditional plan coverage to employees enrolled in the State Health Benefits Program after July 1, 2003.

Commission Cases

An Appellate Division panel has reversed the Commission's decision in City of Trenton and AFSCME, Council 73, Local 2286, P.E.R.C. No. 2001-67, 27 NJPER 234 (¶32081 2001), rev'd, App. Div. Dkt. No. A-6157-00T3 (6/30/03). A copy of the opinion is attached. It will not be published.

The City adopted an ordinance requiring employees to live in Trenton. But it also adopted an ordinance exempting several titles from the residency requirement. One such title was Water System Distribution Technician. Some of the employees holding that position were non-residents when hired and they have been allowed to remain non-residents. Other employees were residents when hired and they have been required to remain residents. One resident employee filed a grievance claiming that the residency exemption was being inequitably applied and asking that he be allowed to live outside the City.

The City filed a scope-of-negotiations petition seeking a restraint of arbitration. The Commission denied that request. It held that the statutes authorizing residency ordinances and exemptions - - N.J.S.A. 40A:9-1.3, 1.6, and 1.7 - - did not eliminate the City's discretion to apply the exemption uniformly and allow the grievant to live outside Trenton. It also concluded that the employee's interest in avoiding disparate treatment outweighed the employer's interest in not being bound to apply its exemption uniformly.

The arbitrator sustained the grievance. The City moved to vacate the award, but a trial court confirmed it. The City appealed both the Commission's negotiability order and the trial court's confirmation order. The Appellate Division panel reversed the Commission's negotiability ruling and, as a consequence, reversed the trial court's order as well and vacated the arbitration award.

The Court holds that N.J.S.A. 40A:9-1.6 preempts the City's power to exempt existing residents from the residency requirement (Slip opinion at p.8). The City can simultaneously exempt non-residents when necessary to hire employees while enforcing the residency requirement against existing residents. Further, the Court rules that N.J.S.A. 40A:9-1.6 is part of a comprehensive and legitimate statutory plan for the adoption of residency requirements and exemptions (Slip opinion at 9). Finally, the Court holds that the City had a managerial prerogative governed by statute to deny the exemption to residents and that its interest in requiring continued residency outweighs the employees' interest in being allowed to reside outside the municipality (Slip opinion at p. 10).

Other Cases

In Cresskill Bd. of Ed. v. Cresskill Ed. Ass'n, ___ N.J. Super. ___ (App. Div. 2003) (copy attached), the Appellate Division restrained arbitration of a grievance challenging the non-renewal of a custodian's annual employment contract. The Court holds that the dispute was not contractually arbitrable because the custodian has no right of reemployment or renewal under either the collective negotiations agreement or his individual contract. Given the absence of any contractual right, the Court held that it was irrelevant that the decision not to renew the custodian

was based on the same reasons that had been used to terminate the custodian in the middle of a school year and that had been held not to constitute just cause by an arbitrator who reinstated the custodian. The Supreme Court is now considering a similar issue of contractual arbitrability in Camden Bd. of Ed. v. Alexander, 352 N.J. Super. 442 (App. Div. 2002), certif. granted 175 N.J. 77 (2002), a case that permitted arbitration and that is not cited in this new case.

In Chrisanthis v. Atlantic Cty., ___ N.J. Super. ___ (App. Div. 2003), an Appellate Division panel upheld summary judgment in favor of a county in a sexual harassment suit. The suit was brought by a licensed practical nurse who was employed by an independent contractor - - Correctional Healthcare Solutions, Inc. (CHS) - - to provide nursing services at the County's correctional facility. The nurse alleged that she had been sexually harassed by a supervising corrections officer. The Court dismissed the suit against the County (but not CHS or the supervising corrections officer) because the County could not be considered an employer of the nurse.

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Attachment