



STATE OF NEW JERSEY
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July 24, 2003

MEMORANDUM

TO: Commissioners

FROM: Robert E. Anderson
General Counsel

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

Commission Cases

In City of Newark and Police Superior Officers' Ass'n, P.E.R.C. No. 2003-68, 29 NJPER 121 (¶38 2003), app. pending, App. Div. Dkt. No. A-004617-02T2, the Commission held that a police officer's claim of entitlement to indemnification for a civil judgment against him could be arbitrated, subject to any public policy arguments being raised in an action to vacate an award against the employer. The City appealed that scope-of-negotiations determination. It also moved to vacate an arbitration award indemnifying the officer and asked the Appellate Division to hold the appeal while the trial court decides whether to vacate the award. That motion was unopposed and has been granted.

In two opinions now on appeal, the Commission directed the County of Morris to disclose the home addresses of negotiations unit employees to their majority representatives. 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; Morris Cty. and CWA, Local 1040, AFL-CIO, P.E.R.C. No. 2003-32, 28 NJPER 456 (¶33168 2002), app. pend., App. Div. Dkt. No. A-1575-02T3. The Appellate Division denied the County's motion to consolidate these two appeals, but directed that they be calendared back-to-back.

Other Cases

In Eckel v. Middlesex Cty. Sheriff's Office, App. Div. Dkt. No. A-1210-01T5 (7/10/03), an Appellate Division panel affirmed a Merit System Board decision sustaining suspensions imposed against an FOP Lodge president and other FOP members who surreptitiously taped conversations with the Sheriff and other superior officers. The employees asserted that the disciplinary charges were brought against them in retaliation for their having testified at an unfair practice proceeding at PERC. The Court agreed with the Merit System Board that the employees had not shown that hostility towards their testimony was a substantial or motivating factor in their suspensions. It does not appear that anyone argued that this type of retaliation claim was within PERC's exclusive jurisdiction under N.J.S.A. 34:13A-5.4(c) and N.J.S.A. 34:13A-5.4a(4).

The unfair practice proceeding in which the officers testified ultimately led to a Commission decision finding that some personnel actions violated N.J.S.A. 34:13A-5.4a(1) and (3) and others did not. That decision is on appeal. Middlesex Cty. Sheriff, P.E.R.C. No. 2003-4, 28 NJPER 308 (¶33115 2002), app. pending, App. Div. Dkt. No. A-000057-02T2.

REA:aat