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September 18, 2003

MEMORANDUM

TO: Commissioners

FROM: Robert E. Anderson  
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SUBJECT: Report on Developments in the Counsel's Office Since July 24, 2003

Commission Cases

On September 8, the New Jersey Supreme Court heard argument in Teaneck Tp. and FMBA Local No. 42, P.E.R.C. No. 2000-33, 25 NJPER 450 (¶30199 1999), aff'd in pt., rev'd in pt. and rem'd in pt., 353 N.J. Super. 289 (App. Div. 2002), certif. granted 175 N.J. 76 (2002). The issue before the Court is whether an interest arbitrator could award a 24/72 hour work schedule to firefighters when their superior officers remained on a 10/14 hour work schedule.

On September 15, an Appellate Division panel heard argument in NJIT and NJIT Superior Officers Ass'n, P.E.R.C. No. 2003-9, 29 NJPER 343 (¶33120 2002), app. pend., App. Div. Dkt. No. A-000222-02T2. The Commission declined to restrain arbitration of a grievance asserting that an employee was entitled to legal representation at a disciplinary hearing.

Two appeals have been filed. The first is in Washington Tp. Fire Dist. #1 and IAFF Local 4204-B, D.R. 2003-16, 29 NJPER 152 (¶44 2003), P.E.R.C. No. 2004-1, 29 NJPER 323 (¶98 2003), app. pend. The Commission denied the District's motion for reconsideration of P.E.R.C. No. 2003-84. In that decision, the Commission denied the District's request for review of D.R. No. 2003-16, which directed that an election be conducted among fire captains and rejected the District's argument that Local 4204-B could not represent this unit since another IAFF affiliate represented a unit of firefighters. The Commission found no extraordinary circumstances warranting reconsideration and reiterated that any conflict of interest issues that might arise post-certification could be addressed through its unfair practice jurisdiction.

The second appeal is in Elizabeth Bd. of Ed. and United Ass'n of Journeymen & Apprentices of the Plumbing/Pipe Fitting Industry, Plumbers Local 24, P.E.R.C. No. 2003-94, \_\_\_ NJPER \_\_ (¶\_\_ 2003), app. pend., App. Div. Dkt. No. A-006779-02T3. The Commission denied the request of the Board for a restraint of binding arbitration of a grievance filed by the majority representative. The grievance asserted that the Board violated the parties' collective negotiations agreement when it refused to grant a plumber who had worked for more than six months the benefits contractually due permanent employees.

#### Other Cases

On September 8, 2003, the Supreme Court heard argument in Alexander v. Camden Bd. of Ed., \_\_\_ N.J. Super. \_\_\_ (App. Div. 2002), certif. granted, \_\_\_ N.J. \_\_\_ (2002). The issue is whether a grievance contesting the non-renewal of the annual employment contract of a school board custodian was contractually arbitrable. An Appellate Division panel said yes.

In Masseri v. Passaic Cty., App. Div. Dkt. No. A-6198-01T3 (8/26/03), an Appellate Division panel held that the County could legally agree to pay accumulated sick leave to officials who retire, but was not obligated to pay sick leave to an official who was not eligible to retire and who left office because she was not re-elected. The Court distinguished In re Morris School Dist. Bd. of Ed. 310 N.J. Super. 332 (App. Div. 1998), certif. den. 156 N.J. 407 (1998), because the right to receive accumulated sick leave did not vest in this case.

In OPEIU Local 32 v. Camden Cty. Municipal Utilities Auth., \_\_\_ N.J. Super. \_\_\_ (App. Div. 2003), the Court upheld a grievance arbitration award of back pay to employees who were improperly denied overtime opportunities given to other employees working out of title. The Court held that back pay may be awarded for contractual violations even if a collective negotiations agreement does not expressly authorize that remedy. The Court relied on State v. Local 195, IFPTE, 169 N.J. 505 (2001).

In Jordan v. Solomon, \_\_\_ N.J. Super. \_\_\_ (App. Div. 2003), a County Prosecutor summarily demoted a senior investigator to a lower grade. The Court held that the Prosecutor was bound to honor progressive discipline procedures created pursuant to a collective bargaining agreement. The Court found that procedures for imposing discipline short of termination were mandatorily negotiable under Camden Cty. Prosecutor and PBA Local 316, P.E.R.C. No. 32, 21 NJPER 397 (¶26243 1995), and that applying the procedures to this demotion would not compromise the Prosecutor's power under N.J.S.A. 2A:157-10 to have investigators serve at the Prosecutor's pleasure and be removed at will.

## Statutes

\_\_\_\_\_The Governor has signed Senate Bill No. 1558. This new law provides that County investigators shall not be removed from office for political reasons or for any cause other than incapacity, misconduct, or disobedience of rules and regulations established by the Prosecutor. An investigator may not be suspended, removed, fined or reduced in rank except for just cause and pursuant to a written complaint. An investigator has a right to a hearing, but may waive that right and appeal directly to any authority specified by law or regulation or by a contractual procedure. A County prosecutor retains the right to remove or demote a chief investigator or deputy chief.

REA:aat