



STATE OF NEW JERSEY  
PUBLIC EMPLOYMENT RELATIONS COMMISSION

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November 10, 2003

MEMORANDUM

TO: Commissioners

FROM: Robert E. Anderson  
General Counsel

SUBJECT: Report on Developments in the Counsel's Office Since October 30, 2003

Commission Cases

The employer has appealed the designee's order in Raritan Valley Community College and Raritan Valley Community College Staff Federation/AFT, Local No. 4143, P.D.D. No. 2004-4, \_\_\_ NJPER \_\_\_ (¶\_\_\_\_ 2003), app. pend. The order requires the employer to deduct representation fees in accordance with N.J.S.A. 34:13A-5.5.

The employer has withdrawn its appeal in Washington Tp. Fire Dist. #1 and IAFF Local 4204-B, D.R. 2003-16, 29 NJPER 152 (¶44 2003), req. for rev. den., P.E.R.C. No. 2003-84, 29 NJPER 221 (¶66 2003), recon. den., P.E.R.C. No. 2004-1, 29 NJPER 323 (¶98 2003). The appeal challenged the certification of IAFF Local 4204B as the majority representative of superior officers since another IAFF affiliate represented a separate unit of firefighters. The appeal was withdrawn because the parties negotiated a contract.

Other Cases

The Appellate Division has affirmed two improper practice decisions of the Port Authority Employment Relations Panel. In re Alleged Improper Practice Under Section XI, Paragraph A(d) of the Port Authority Labor Relations Instruction, IP 98-16, 17 & IP 99-2, App. Div. Dkt. No. A-1160-02T5 (10/31/03) (copy attached) and In re Alleged Improper Practice Under Section XI, Paragraph A(d) of the Port Authority Labor Relations Instruction, IP 00-02, (11/7/03) (copy attached). In the first case, the Panel held that the Authority did not commit an improper practice when it invoked a second "second chance" agreement and discharged an automotive mechanic for testing positive on a drug test for a third time. In the second case, the

Panel held that the Authority was not required to pay a detective out-of-zone premium payments for the period he was assigned to JFK airport. In both cases, the Court announced and applied the same deferential standards of review applicable to Commission decisions and affirmed the Panel's decisions since they were supported by substantial credible evidence and were not arbitrary, capricious or unreasonable. These were the first appeals of Panel decisions to reach the Appellate Division.

### **Other Cases**

In Grasso v. West New York Bd. of Ed., \_\_\_ N.J. Super. \_\_\_ (App. Div. 2003), the Court upheld a jury verdict finding that the Board violated the Law Against Discrimination when it refused to promote the plaintiff to high school assistant principal because of her sex. The Court held that the jury could properly rely on testimony that the principal told the Assistant Superintendent for Personnel that he wanted a Hispanic male as assistant principal; the principal's comment was not a "stray remark," but was made by one who participated in the interviewing process and whose recommendation formed the basis for other recommendations proceeding up the chain of decisionmaking. The Court also held that back pay awards for a school board employee denied a promotion should not be limited to one or two years on the theory that the employee might not have been reappointed or granted tenure; any uncertainty about how the employee would have performed must be resolved against the party that violated the LAD. Finally, the court held that the record did not establish that the plaintiff would have been promoted absent any discrimination since there were several other qualified applicants who were recommended; thus the Court rejected front pay and reinstatement as remedies and reasoned that any back pay award should be reduced.

REA:aat  
Attachment