



STATE OF NEW JERSEY
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January 22, 2004

MEMORANDUM

TO: Commissioners

FROM: Robert E. Anderson
General Counsel

SUBJECT: Report on Developments in the Counsel's Office Since December 18, 2003

Commission Cases

Given a settlement, the Board has withdrawn its appeal in Elizabeth Bd.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, 29 NJPER 290 (¶88 2003). The Commission had declined to restrain arbitration of a grievance asserting that an employee had worked long enough to qualify for the contractual benefits due permanent employees.

The Appellate Division has granted the Commission's unopposed motion to remand the appeal in Hotel, Restaurant & Cafeteria Employees Union Local 3 and Diana Kathy Dasent. The Director of Unfair Practices refused to issue a Complaint on Dasent's charge alleging a breach of the duty of fair representation. D.U.P. No. 2003-10, 29 NJPER 200 (¶59 2003). Dasent appealed directly to the Appellate Division rather than the Commission pursuant to N.J.A.C. 19:14-2.3. Because the case presented issues warranting Commission consideration, the Commission and the parties agreed to have the case remanded so Dasent could file an appeal with the Commission.

The Appellate Division has granted amicus curiae status to the New Jersey Education Association in Franklin Tp. Bd. of Ed. and Franklin Tp. Ed. Ass'n, P.E.R.C. No. 2003-58, 29 NJPER 97 (¶27 2003), app. pend., App. Div. Dkt. No. A-004242-02T3. The NJEA will file a brief, but will not participate in oral argument. The New Jersey School Boards Association is also an amicus curiae.

Other Cases

In Hospital Professionals and Allied Employees of New Jersey, AFT Local 5004 and Englewood Hosp. and Med. Center, Civ. No.: 02-5152 (JWB) (12/22/03), Chief Judge Bissell of the United States District Court of New Jersey upheld an award requiring the Medical Center to take affirmative steps to eliminate its unreasonable reliance on mandatory overtime to meet its nursing needs. The arbitrator ordered the Center to “reevaluate its scheduling structure”; “make a more aggressive, early effort to fill known holes in the schedule”; and “document those affirmative efforts.” Judge Bissell rejected arguments that the award exceeded the arbitrator’s power or was mooted by a subsequent collective negotiation agreement or by N.J.S.A. 34:11-56a31 prohibiting (with limited exceptions) health care facilities from requiring nurses to accept overtime work.

In Wiegand v. Motiva Enterprises, 2003 U.S. Dist. LEXIS 22518 (D.N.J. 2003), Judge Simandle granted summary judgment to the employer on a claim that it wrongfully terminated a gas station store manager. The manager was fired because he maintained a neo-Nazi website that sold racist hate music and items. The Court concluded that the employer had a strong interest in regulating any appearance of discrimination or racial bias towards fellow employees and customers and that the termination did not violate any clear mandate of public policy under Pierce v. Ortho Pharmaceutical Corp., 84 N.J. 58 (1980).

In Brennan v. Norton, ___ F.3d ___ (3d Cir. 2003), the Court reversed an award of punitive damages against the Town Manager of Teaneck. The Manager was hostile towards the plaintiff firefighter’s protected speech on matters of public concern (such as the presence of asbestos in the fire department); his hostility motivated suspensions and a refusal to extend an injury leave, but the record did not show that the Manager acted out of either recklessness or callousness. The Court added that a contrary conclusion would mean that any finding of retaliatory motive would automatically support punitive damages.

In re Spadavecchia, App. Div. Dkt. No. A-2755-02T3 (12/18/03), held that the 20 day period for appealing a disciplinary action to the Merit System Board is mandatory and jurisdictional. The Court rejected a contention that the Merit System Board should consider an appeal of a termination filed six days too late because of inadvertence.

REA:aat