



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

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November 16, 2004

MEMORANDUM

TO: Commissioners

FROM: Robert E. Anderson  
General Counsel

SUBJECT: Monthly Report on Developments in the Counsel's Office Since October 28, 2004

Commission Cases

The Appellate Division has affirmed a decision by a Commission designee ordering Raritan Valley Community College to deduct representation fees from the paychecks of employees represented by the Raritan Valley Community College Staff Federation/AFT, Local No. 4143. P.D.D. No. 2004-4, 29 NJPER 404 (¶133 2003), aff'd App. Div. Dkt. No. A-001319-03T5. The Court rejects the employer's challenges to the constitutionality of the 2002 representation fee legislation amending N.J.S.A. 34:13A-5.5 and affirms for the reasons stated in In re Hunterdon Cty., 369 N.J. Super. 572 (App. Div. 2004), certif. denied, \_\_\_ N.J. \_\_\_ (2004).

Other Cases

\_\_\_ In Reynolds v. TCM Sweeping, Inc., \_\_\_ F.Supp.2d \_\_\_ (D.N.J. 2004), Judge Irenas held that the federal Labor-Management Relations Act did not preempt a state-law claim under New Jersey's Conscientious Employee Protection Act. The CEPA claim alleged that a mechanic was fired for refusing to withdraw a grievance seeking back pay for alleged violations of the Davis-Bacon Act wage requirements. An arbitrator had earlier ruled that the employer had just cause to discharge the employee for driving company trucks recklessly and for threatening a supervisor, but the Court held that the CEPA claim was not inextricably intertwined with the provisions of the collective bargaining agreement covering the employee. The Court also held that removal of the CEPA claim to federal court was improper so the case was remanded to the New Jersey Superior Court.

In Larsen v. Branchburg Tp., Dkt. No. SOM-L-480-03 (10/14/04), Superior Court Judge Peter A. Buchsbaum, J.S.C., granted summary judgment and dismissed a claim that New Jersey's Law Against Discrimination required that the employer create a light duty position for a pregnant police officer. Judge Buchsbaum concluded that pregnancy without complications was not a cognizable disability under the LAD and that the plaintiff was not perceived to have a disability under the LAD. Even if the plaintiff had a LAD-covered disability, Judge Buchsbaum concluded that the employer met its LAD obligations by engaging in an interactive process and offering the officer the reasonable accommodation of a position in the tax assessor's office.

REA:aat