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PUBLIC EMPLOYMENT RELATIONS COMMISSION

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December 7, 2004

MEMORANDUM

TO: Commissioners

FROM: Robert E. Anderson  
General Counsel

SUBJECT: Monthly Report on Developments in the Counsel's Office Since November 23, 2004

Commission Cases

The New Jersey Supreme Court has denied certification in Middlesex Cty. Sheriff and Joseph Kasha and Steven Eckel, P.E.R.C. No. 2003-4, 28 NJPER 308 (¶33115 2002), aff'd 30 NJPER 239 (¶89 App. Div. 2004), certif. den. \_\_\_ N.J. \_\_\_ (2004). The Commission held and the Appellate Division agreed that the Sheriff violated 5.4a(1) and (3) of the Employer-Employee Relations Act when he suspended and transferred an officer who had asked other officers about drug testing and engaged in other protected activity.

Other Cases

In Rosales v. State of New Jersey (Dept. of the Judiciary), 2004 N.J. Super. LEXIS 393 (App. Div. 2004), the Court held that public policy requires that workers' compensation benefits be offset by ordinary disability pension payments received for the same disability.

In Buscemi v. Cumberland Cty. Prosecutor's Office, App. Div. Dkt. No. A-2749-03T2 (11/17/04), the Court affirmed a summary judgment in favor of Cumberland County and its Prosecutor and dismissed a claim that the Prosecutor wrongfully terminated Buscemi, an investigator, after 14 years.

In 2001, the then Prosecutor issued a Standard Operating Procedure with a section entitled "Discipline." That section stated:

“No permanent employee shall be disciplined, demoted or discharged without just cause.”

According to Buscemi, the investigators’ union agreed to a disfavored health benefits package in exchange for this SOP.

In May 2003, a new Prosecutor discharged the investigator. The Appellate Division panel presumed “the investigator was terminated because the newly appointed prosecutor wished that another join his team in Buscemi’s position or to otherwise reorganize his office.”

The Appellate Division panel reasoned that the SOP did not apply to Buscemi because he was not the subject of discipline. If the SOP were interpreted to cover at-will terminations for reasons other than discipline, the Court held it would be preempted by N.J.S.A. 2A:157-10 and thus non-negotiable. Further, such an interpretation would significantly interfere with the governmental policy of permitting each prosecutor to assemble his or her own team. In addition, the Court did not construe the SOP’s discipline section as conferring tenure rights on unclassified employees.

### Statutes

Acting Governor Codey has signed into law the Uniform Mediation Act. Assembly Bill No. 841. A copy of this act appears on the New Jersey Legislature's website.

According to the Sponsors' Statement and the Assembly Judiciary Committee Statement, the act is intended to protect all individuals who choose to resolve their disputes through court-ordered mediation or voluntary mediation where the parties and mediator expect that mediation communications will be privileged against disclosure. The act, however, does not apply to mediations conducted by PERC. Section 3b provides:

b. The act shall not apply to a mediation:

(1) relating to the establishment, negotiation, administration, or termination of a collective bargaining relationship or to any mediation conducted by the Public Employment Relations Commission or the State Board of Mediation;

(2) relating to a dispute that is pending under or is part of the processes established by a collective bargaining agreement, except that the act applies to a mediation arising out of a dispute that has been filed with a court or an administrative agency other than the Public Employment Relations Commission or the State Board of Mediation....

The Assembly Judiciary Committee Statement adds: "This bill would explicitly exempt from its coverage mediation conducted by the Public Employment Relations Commission or the State Board of Mediation pursuant to the regulations of these labor relations agencies." In both the

case of the Uniform Arbitration Act adopted two years ago and the case of the Uniform Mediation Act, the Legislature heeded the call of the labor relations community to exempt labor relations processes from the bills and to leave such processes to the well-developed body of statutes, regulations, and case law providing the safeguards needed to make the labor relations system work.

REA:aat