



STATE OF NEW JERSEY
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February 17, 2005

MEMORANDUM

TO: Commissioners

FROM: Robert E. Anderson
General Counsel

SUBJECT: Monthly Report on Developments in the Counsel's Office Since January 27, 2005

Commission Cases

_____The employer has asked the Appellate Division to stay the Commission's order in Warren Hills Reg. Bd. of Ed. and Warren Hills Reg. H.S. Ed. Ass'n, P.E.R.C. No. 2005-26, 30 NJPER 439 (¶145 2004), app. pending, App. Div. Dkt. No. A-001747-04T5. That order directs the employer to reinstate bus drivers who were replaced by subcontractor employees after the Association won a representation election. At its January meeting, the Commission denied a stay.

Other Cases

Judge Garry J. Furnari, J.S.C. of the Essex County Superior Court has affirmed a decision 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 97-28 v. Port Authority Employment Relations Panel, Dkt. No. ESX-L-1897-01 (1/21/05) (copy attached). The Panel held that the Port Authority violated its Labor Relations Instruction when it unilaterally transferred negotiations unit work from police officers employed by the Authority to security guards employed by a subcontractor. The unit work consisted of performing traffic control functions outside the International Arrivals Building at JFK and certain security functions both within and outside that building. The Court defers to the Panel's expertise in applying the Labor Relations Instruction to the facts and legal arguments.

In re Hruska, 2005 N.J. Super. LEXIS 47 (App. Div. 2005), held that the Borough of Carteret improperly excluded a candidate from consideration for a paid firefighter position based on an unannounced threshold qualification of being an active firefighter. The candidate was one

of the top three candidates for the civil service position, but was twice passed over for hiring based on the unannounced qualification. While it was not illegal for the Board to use active volunteer service in differentiating between candidates on merit and fitness grounds, it was illegal to exclude a candidate from comparison with other candidates based on a secret eligibility requirement.

In Brentwood Medical Associates v. United Mine Workers of America, 2005 U.S. App. LEXIS 1415 (3d Cir. 2005), the Third Circuit Court of Appeals upheld an arbitration award sustaining a bumping grievance even though the arbitrator inexplicably cited seniority/bumping language in his decision that could not be found in the collective bargaining agreement. The Court concluded that the arbitrator's reasoning could still support the award if the anomalous language were excised. A dissenting opinion would have vacated the award because the error violated a clause prohibiting an arbitrator for adding or modifying the agreement.

In Piscataway Tp. Bd. of Ed. v. Piscataway Tp. Ed. Ass'n, App. Div. Dkt. No. A-2435-03T2 (1/24/05), the Court held that a dispute over a teacher's effective date of termination was not contractually arbitrable. The parties' arbitration clause was limited to disputes arising under the collective bargaining agreement and the grievance relied solely on termination provisions in the teacher's individual employment contract.

In Wilde v. O'Leary, ___ N.J. Super. LEXIS ___ (App. Div. 2005), an Appellate Division panel vacated an arbitration award issued pursuant to the NASD Code of Arbitration Procedure. The Court held that the arbitration panel committed misconduct under N.J.S.A. 2A:24-8 when it refused to grant plaintiff an extension of time to retain a new expert after defendants strategically waited until the expert was presented at hearing before making their motion to preclude his testimony. Given that plaintiff was required to arbitrate her claim before an industry-controlled panel, the arbitrators had to provide a fair forum and respect fundamental due process.

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Attachment