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May 19, 2005

MEMORANDUM

TO: Commissioners

FROM: Robert E. Anderson  
General Counsel

SUBJECT: Monthly Report on Developments in the Counsel's Office Since April 28, 2005

Commission Cases

\_\_\_\_\_The County has withdrawn its appeal in Essex Cty. and Essex Cty. Sheriff and Essex Cty. Sheriff Officer's PBA Local 183, P.E.R.C. No. 2005-56, \_\_ NJPER \_\_ (¶\_\_ 2005), App. Div. Dkt. No. A-002812-04T5. In this case, the Commission affirmed an interest arbitration award involving a negotiations unit of sheriff's officers.

Other Cases

\_\_\_\_\_Joanne Yuhasz has appealed the federal district court opinion dismissing her Complaint against the Commission and various other defendants in Yuhasz v. Leder, Civil Action No. 04-1508. The federal district court has also enjoined Yuhasz from filing any more lawsuits arising out of the same matters that were the subject matter of this dismissed action and seven other previously dismissed cases. The Court found that an injunction was appropriate because Yuhasz "has engaged in a pattern of abusive and vexatious litigation that has compromised the valuable resources of both the Judiciary and the growing number of defendants, many of whom have been mired in this litigation for nearly a decade."

In Klein v. UMDNJ, \_\_ N.J. Super. \_\_ (App. Div. 2005), an Appellate Division panel held that summary judgment was properly granted against a doctor who filed a CEPA claim. The Court found that the plaintiff had suffered no adverse employment action. While plaintiff was temporarily reassigned from clinical to administrative duties and then was indefinitely assigned

to administer anesthesia under another faculty member's supervision, he did not suffer a termination, suspension or demotion and he voluntarily withdrew from all clinical duties when the employer would not remove the supervision requirement or issue a written apology or retraction. In addition, the Court found that the doctor had not identified a rule, regulation, law or public policy that he had complained about; instead he had a private dispute about issues such as the physical layout of the Radiology Department, the difficulty of operating the equipment in a confined space, and the balancing of adequate staffing and equipment with budgetary constraints.

In Nardello v. Voorhees Tp., App. Div. Dkt. No. A-1811-03T2 (4/4/05), another Appellate Division panel reversed a summary judgment granted for the employer in a CEPA case. The panel concluded that the plaintiff had alleged sufficient facts to prove, if true, that an adverse employment action had occurred even though he had not been discharged, suspended, or demoted. The plaintiff alleged a series of incidents that arose after he was forced to inform superiors of cover-ups and alleged misconduct: he was allegedly denied permission to obtain firearms instruction training; coerced to resign as leader and a member of the SWAT team; not allowed to work in crime prevention programs; removed from the detective bureau; and given demeaning jobs for his rank. Together, these alleged incidents could constitute an actionable pattern of retaliatory conduct.

In Elizabethtown Water Co. v. Vollers Excavating & Construction, Inc., 2005 N.J. Super. LEXIS 125 (App. Div. 2005), an Appellate Division panel considered whether to stay a lawsuit involving a large construction project and many defendants until an arbitration involving some claims and some parties was completed. The Court noted that some fragmentation of litigation is unavoidable when some matters are subject to arbitration and other matters are not so the entire controversy doctrine does not require consolidation of all claims. Staying the court action pending arbitration made sense in this case since the overlap between parties, issues, and facts was likely to be substantial.

REA:aat