



**STATE OF NEW JERSEY
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January 18, 2006

MEMORANDUM

TO: Commissioners

FROM: Don Horowitz
Deputy General Counsel

SUBJECT: Monthly Report on Developments in the Counsel's Office Since December 15, 2005

Commission Cases

_____ A three-judge panel of the Appellate Division has unanimously affirmed the Commission's decision in Warren Hills Reg. Bd. of Ed. v. Warren Hills Reg. H.S. Ed. Ass'n., P.E.R.C. No. 2005-26, 30 NJPER 439 (¶145 2004), aff'd, App. Div. Dkt. No. A-001747-04T5 (12/22/05). The Commission held that the Board violated N.J.S.A. 34:13-5.4a(1) and (3) when it terminated its school bus drivers and subcontracted their work to a private company in retaliation for their electing the Association as their majority representative. The Commission and the Court accepted the Hearing Examiner's credibility determinations and findings of fact and his conclusions concerning the motivations of the superintendent who recommended subcontracting. In determining that the Board had not proved that it would have subcontracted the bus service absent the superintendent's hostility to the drivers' seeking union representation, the Hearing Examiner properly relied on these factors: the decision to subcontract was made immediately after the employees voted for representation; the school district had never considered subcontracting before, despite periods of economic hardship; and the superintendent had made comments exhibiting his hostility to the drivers' becoming unionized.

_____ On January 11, 2006 the Board filed a Notice of Petition for Certification indicating its intent to seek Supreme Court review of the Appellate Division's Decision. To complete its application, the Board must file a Petition for Certification.

Other Cases

In Aperuta v. Pirrello, ___ N.J. Super. ___ (App. Div. 2005), the Court held that Morris Township was required to provide a defense to a police officer who was sued for defamation after he told a third party that the plaintiff may have AIDS. The third party "was breaking up with or on the verge of [breaking up with] the plaintiff" and the police officer told him about what he believed to be the plaintiff's condition because he did not want him to risk getting AIDS. The Court held that the N.J.S.A. 40:14-155 applies because the legal proceeding "was directly related to the lawful exercise of police powers in the furtherance of his official duties." The police officer was sued because of an affirmative act taken to protect the third party; his conduct was not a "perversion" of his job or taken to accomplish an "ulterior illegal goal." The Court also found that the officer's disclosure was within the "scope of his employment." The Court reasoned that the scope of employment accords with the language set forth in N.J.S.A. 40A:14-155. A concurring opinion by Judge Weissbard would abandon the "perversion" and "ulterior or illegal goal" tests in favor of the "scope of employment" test.

_____ In Ramsey Teachers. Ass'n v. Ramsey Bd. of Ed. Teachers, ___ N.J. Super. ___, 2006 N.J. Super. LEXIS 2 (App. Div. 2006), the Appellate Division affirmed a decision of the State Board of Education holding that a 1999 law allowing a school district to supplement, with non-certified nurses, the services of certified school nurses, provided that the non-certified nurse is assigned to the same building as a certified school nurse, did not require the actual physical presence of a certified nurse in a school building at all times. The New Jersey School Boards Association and the New Jersey Education Association participated as friends of the court.

New Laws

On January 12, 2006 Governor Codey approved A-4162. This new law adds this paragraph to the end of N.J.S.A. 34:13A-5.3:

In interpreting the meaning and extent of a provision of a collective negotiation agreement providing for grievance arbitration, a court or agency shall be bound by a presumption in favor of arbitration. Doubts as to the scope of an arbitration clause shall be resolved in favor of requiring arbitration.

The statement accompanying the bill provides:

This bill requires any court or agency, when interpreting the meaning and extent of a provision of a public employment collective negotiation agreement providing for grievance arbitration, to be bound by a legal presumption in favor of arbitration. The bill requires that any doubt as to the scope of an arbitration clause of the agreement be resolved in favor of requiring arbitration.

DH:aat
Attachment