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June 21, 2006

MEMORANDUM

TO: Commissioners

FROM: Robert E. Anderson  
General Counsel

SUBJECT: Monthly Report on Developments in the Counsel's Office Since May 25, 2006

Commission Cases

\_\_\_\_\_ An appeal has been filed in Evesham Municipal Utilities Auth. and Teamsters Local Union No. 676, P.E.R.C. No. 2006-78, 32 NJPER 120 (¶56 2006). The Commission held that a successor contract proposal concerning retiree health benefits was mandatorily negotiable and was not preempted by the State Health Benefits Program statute.

Camden County has moved for leave to file an interlocutory appeal from an interim relief order. Camden Cty. and Camden Council No. 10, I.R. No. 2006-18, 32 NJPER 114 (¶54 2006), recon. den. I.R. No. 2006-20, \_\_\_ NJPER \_\_\_ (¶\_\_\_ 2006), App. Div. Dkt. No. AM-619-05T1],. The designee ordered the employer to restore, pending a final Commission decision, a policy allowing employees suspended for more than 30 days the choice of paying COBRA premiums for health insurance during their suspensions or having the employer pay the premiums, subject to reimbursement once the employees returned to work.

Other Cases

In Potente v. Hudson Cty., 2006 N.J. LEXIS 1037 (2006), the New Jersey Supreme Court held that a successful public employee plaintiff in a Law Against Discrimination suit may recover pre-judgment interest from a defendant public entity. The Court, however, reversed a

directed verdict in the plaintiff's favor, finding that there were conflicting facts concerning the employee's alleged refusal to cooperate with the employer's efforts to accommodate his disability.

In New Jersey Turnpike Auth. v. Local 196, IFPTE, App. Div. Dkt. No. A-6282-04T5 (5/3/06) (copy attached), an Appellate Division panel vacated an arbitration award that had reduced a discharge of a toll collector to a 14 month unpaid suspension. The toll collector was discharged for firing a paintball gun at the window and windshield of a van traveling on the Garden State Parkway; at the time the employee was driving home from work and still in uniform. The arbitrator found a sufficient nexus between the toll collector's employment and misconduct to warrant disciplining him, but the arbitrator found that the "competing equities" and "the nature of what occurred in the context of the grievant's mental state" (he had been diagnosed as a "manic depressive" and was under personal stress that day) made termination unjust. The arbitrator conditioned reinstatement on passing a physical and psychological fitness for duty examination and continued monitoring of his mental fitness thereafter.

The trial court confirmed the award, but the Appellate Division vacated it as against public policy. It stated: "A decision by NJTA to continue his employment would have an impact on the motoring public's perception of the importance of the prohibition against such conduct that is too obvious to require elaboration. The arbitrator's award does not account for impact on safety of the roadway for which NJTA is responsible."

In PBA Local 378 v. Sussex Cty., Office of the Sheriff, App. Div. Dkt. No. A-0375-05T5 (5/30/06), an Appellate Division panel granted summary judgment to the employer in a LAD lawsuit. The PBA filed the lawsuit on behalf of female correction officers whose regular days off were changed to ensure that there would be at least two female officers on each shift, one for the female cell blocks and another for the female intake unit. The Department of Personnel had granted bona fide occupational qualification exemptions permitting the hiring of female correction officers to staff certain shifts and the Court held that the parties' collective negotiations agreement permitted the Sheriff to base assignments on the BFOQ exemptions and the inmates' privacy interests rather than seniority.

In Garcetti v. Ceballos, 2006 U.S. LEXIS 4341 (2006), the United States Supreme Court held that the First Amendment does not protect statements made by public employees pursuant to their official duties. The Court thus dismissed a lawsuit claiming that a deputy district attorney was denied a promotion and transferred to a remote location in retaliation for a memorandum he wrote questioning the truthfulness of an affidavit used to obtain a critical search warrant. The Court distinguished an employee speaking as a citizen and addressing a matter of public concern; such speech can only be restricted if necessary for their employer to operate efficiently and effectively.

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Attachment