



STATE OF NEW JERSEY
PUBLIC EMPLOYMENT RELATIONS COMMISSION

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September 21, 2006

MEMORANDUM

TO: Commissioners

FROM: Robert E. Anderson
General Counsel

SUBJECT: Monthly Report on Developments in the Counsel's Office Since August 10, 2006

Commission Cases

_____ An appeal has been filed in Camden Cty. Prosecutor and Camden County Assistant Prosecutors Ass'n, P.E.R.C. No. 2007-9, ___ NJPER ___ (¶__ 2006). The Commission held that the assistant prosecutors were not covered by the Police and Fire Interest Arbitration Reform Act and thus dismissed the Association's interest arbitration petition.

The employer has filed an appeal of the Commission's interim relief order in Franklin Tp. and Franklin Tp. PBA Loc. No. 188, P.E.R.C. No. 2006-103, ___ NJPER ___ (¶__ 2006). The Commission found that the employer had decreased health insurance benefits without negotiations by eliminating the use of out-of-network providers, decreasing coverage in several areas, and increasing co-pays and deductibles. It did not order the Township to restore the previous health insurance plan, but it did order it to maintain a fund to pay for any differences in benefits.

_____ Oral argument has been scheduled for October 12 in Tp. of Piscataway and Piscataway Township PBA Local 93, P.E.R.C. No. 2005-79, 31 NJPER 176 (¶71 2005), appeal pending, App. Div. Dkt. No. A-6488-04T1. The Union has appealed an aspect of the Commission's remedial order declining to rescind police office promotions. Don Horowitz will represent the Commission.

Other Cases

In Feldman v. Hunterdon Radiological Associates, 187 N.J. 228 (2006), the New Jersey Supreme Court held that a doctor who was a shareholder and director of a radiologists' association could not maintain a CEPA action against the association. The Court held that the radiologist was not an "employee" for CEPA purposes because as a shareholder-director she had all the tools needed to root out wrongdoing and did not need to blow the whistle at all.

In In Re Herrmann, 2006 N.J. Super. LEXIS 243 (App. Div. 2006), the Court reversed a Merit System Board determination upholding the dismissal of a family services specialist trainee. The Court agreed with an ALJ and the MSB that the employee had inexcusably flicked a cigarette lighter in the face of a five year old child during a home inspection of suspected child abuse and that discipline was warranted. But it found two problems with dismissal as a sanction: (1) the cigarette lighter incident was the only specification for the charge and that specification by itself did not warrant dismissal without progressive discipline, and (2) the other alleged shortcomings relied upon - - poor attitude, lack of evaluation skills and judgment, and failure to document incidents - - were not charged.

Oral argument has been scheduled for October 18 in I/M/O The Alleged Improper Practice Under Section XI, Paragraph A(d) of the Port Authority Labor Relations Instruction; IP 97-28, Final Decision and Order of the Port Authority Employment Relations Panel; Port Authority of New York and New Jersey v. Port Authority Employment Relations Panel, appeal pending, App. Div. Dkt. No. A-3134-04T2. The Port Authority Employment Relations Commission Panel held that the Authority committed an unfair labor practice when it did not negotiate with the Port Authority Police Benevolent Association before transferring negotiations unit work - - patrolling areas outside and inside JFK International Terminal - - from police officers to private security guards. Judge Furnari of the Essex County Superior Court upheld the decision at the trial court level.

REA:aat