



**STATE OF NEW JERSEY
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September 28, 2006

MEMORANDUM

TO: Commissioners

FROM: Robert E. Anderson
General Counsel

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

Commission Cases

The New Jersey Supreme Court has denied a petition for certification in Passaic Valley Water Commission and CWA Local 1032, P.E.R.C. No. 2005-66, 31 NJPER 121 (¶51 2005), aff'd 32 NJPER 139 (¶64 2006), App. Div. Dkt. No. A-005195-04T1 (4/21/06). The Commission declined to restrain arbitration of a grievance seeking out-of-title pay for an employee who allegedly performed the duties of a senior water repairer. The Appellate Division agreed with the Commission's reasoning and affirmed.

An appeal has been filed in Rutgers, The State Univ. and FOP Lodge 62, P.E.R.C. No. 2007-5, 32 NJPER 274 (¶113 2006). Applying the holding of State v. State Troopers Fraternal Ass'n, 134 N.J. 393 (1993), the Commission restrained binding arbitration of a grievance contesting the termination of a police officer.

The oral argument scheduled 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, has been postponed indefinitely.

Other Cases

The Third Circuit Court of Appeals has invalidated a transfer and assignment policy used by the City of Newark to staff its 108 fire companies. Lomack v. City of Newark, 2006 U.S. App. LEXIS 23707 (3d Cir. 2006). The Court concluded that the policy violated the Equal Protection clause of the United States Constitution because it was based solely on racial balancing and was not justified by any compelling State interest.

In Local 827, IBEW v. Verizon New Jersey Inc., 458 305 (3d Cir. 2006), the Third Circuit Court of Appeals held that three grievances relating to overtime were not contractually arbitrable given a clause limiting arbitration to disputes arising under specified articles of the collective negotiations agreement. Given the narrow arbitration clause, the Court declined to apply the presumption of arbitrability applicable to broad arbitration clauses.

REA:aat