



STATE OF NEW JERSEY
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October 18, 2006

MEMORANDUM

TO: Commissioners

FROM: Robert E. Anderson
General Counsel

SUBJECT: Monthly Report on Developments in the Counsel's Office Since September 28, 2006

Commission Cases

_____ An appeal is pending in the representation case in which the PBA won an election and replaced the FOP as the majority representative of the corrections officers employed by the State of New Jersey. State of New Jersey and Policemen's Benevolent Ass'n, Local 105 and New Jersey State Corrections Ass'n, FOP Lodge 200, D.R. No. 2006-18, 32 NJPER 145 (¶66 2006), review denied P.E.R.C. No. 2006-92, 32 NJPER 223 (¶92 2006), App. Div. Dkt. No. A-5635-05T3. The FOP has received an extension of time in which to file its brief. That brief is now due on November 6, 2006.

At the request of the Appellate Division Clerk's Office, I have filed a motion to dismiss the "appeal" in Hudson Cty. and United Workers of America, Local 322 and District 1199J, NUHHCE, AFSCME, AFL-CIO, P.E.R.C. No. 2006-76, 32 NJPER 101 (¶49 2006), App. Div. Dkt. No. A-3871-05T1. On March 29, the Commission denied a request for review of a decision of the Director of Representation directing an election and declined to stay the election. The request for review and a stay had been filed by a faction of Local 322. That faction then filed an action in lieu of prerogative writ in the trial division of the Hudson County Superior Court, but Judge Gallipoli correctly concluded that he lacked jurisdiction to review the agency's interlocutory order and transferred the case to the Appellate Division so that a motion for leave to

appeal could be filed. Later that day, Judge Rodriguez declined to stay the election and it went ahead the next day. District 1199J won and was certified as the majority representative. No appeal was taken from the certification and no motion for leave to file an interlocutory order was ever filed so there is really nothing pending before the Appellate Division. But the Clerk's Office wanted a motion so that the transfer order could be dismissed.

In Franklin Tp. and PBA Local 188, P.E.R.C. No. 2006-103, 32 NJPER 135 (¶62 2006), App. Div. Dkt. No. A-6307-05T1, the Appellate Division dismissed an "appeal" filed by the Township from a PERC interim relief order requiring the Township to maintain a fund to pay for any differences in health benefits and use of out-of-network doctors. The Township never filed a motion for leave to file an interlocutory appeal.

REA:aat