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November 21, 2006

MEMORANDUM

TO: Commissioners

FROM: Robert E. Anderson
General Counsel

SUBJECT: Supplemental Report on Developments in the Counsel's Office Since October 26, 2006

Commission Cases

The Appellate Division has granted the Commission's 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. A panel then granted the unopposed motion to dismiss.

An appeal and cross-appeal have been filed in Middletown Tp. and PBA Local 124, P.E.R.C. No. 2007-18, ___ NJPER ___ (¶___ 2006). The Township appealed the ruling that it committed an unfair practice when it unilaterally discontinued a practice of paying police officers

for a reasonable amount of travel time when called in for emergency duty. PBA Local 124 has appealed the ruling that the Township did not repudiate the parties' grievance procedure when it did not implement the police chief's determination sustaining a grievance.

Other Cases

In Middletown Tp. PBA, Local 124 and Middletown Tp. and Middletown Tp. SOA v. Middletown Tp., App. Div. A-3380-04T1 (11/16/06) (copy attached), the Appellate Division affirmed a lower court order confirming an arbitration award issued in favor of the PBA and SOA. The arbitrator ruled that the employer had contractually agreed to pay health care benefits to police officers who retired with 25 years of credited service in the Police and Firemen's Retirement System, regardless of how many years of service an officer had with the Township. The contracts and the parties' practice called for that benefit, even though it was not legal when it began; before 1995, N.J.S.A. 40A:10-23 required that a retiring officer have 25 years of credited service in the PFRS and up to 25 years of service with the employer at the time of retirement, "such period of service to be determined by the employer and set forth in an ordinance or resolution as appropriate." The employer argued that the language in quotation marks invalidated the contractual benefit since the employer had not adopted an ordinance or resolution specifically stating the required period of service under this statute, but the Court held that the "ordinance or resolution" requirement was satisfied by an ordinance adopting by reference a collective negotiations agreement with that benefit provided.

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Attachment