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February 26, 2004

MEMORANDUM

TO: Commissioners

FROM: Robert E. Anderson  
General Counsel

SUBJECT: Supplemental Report on Developments in the Counsel's Office Since  
January 29, 2004

Commission Cases

No developments.

Other Cases

In Howell Tp. Ed. Ass'n v. Howell Tp. Bd. of Ed., App. Div. Dkt. No. A-1562-02T5 (12/23/03), an Appellate Division panel affirmed the trial court's refusal to vacate an arbitration award in the Board's favor. The arbitrator found that the involuntary reassignment of a school maintenance worker to a different shift did not constitute discipline without just cause and did not violate any seniority rights. The Court noted that the text of the contract did not require that shift assignments be based on seniority; to the contrary, the contract gave the Board discretion to transfer and assign employees as it saw fit.

In Ganges v. Burlington Cty., App. Div. Dkt. No. A-5433-02T1 (2/02/04), the Court held that a corrections captain was entitled to a trial court's de novo review of a three-day suspension for insubordination. The captain had a constitutional right to a trial because no statute, regulation, or collective bargaining agreement accorded him an administrative procedure for appeal or review of the disciplinary action. "[P]rinciples of fundamental fairness and due process

dictate that such public employees be provided judicial de novo review of the disciplinary action in the Law Division. This ruling simply assures that all disciplined public employees are provided an appropriate and meaningful appeal procedure.” (Slip opinion at p. 8). This holding may apply to all forms of minor discipline where a public employee does not have a right to appeal to the Merit System Board or other governmental body or an opportunity to arbitrate a grievance.

In Crespo v. Evergo Corp., \_\_\_ N.J. Super. \_\_\_ (App. Div. 2004), the Court dismissed an illegal alien’s discriminatory termination claim under the Law Against Discrimination. The Court held that the Immigration Reform and Control Act of 1986 precluded the plaintiff from recovering either economic or non-economic damages based on her claim that she was discriminatorily denied the opportunity to return to work as a warehouse employee after giving birth; the Court stressed that the plaintiff’s claims arose solely from her termination and had nothing to do with the employer’s treatment of her during her employment.

REA:aat