



**STATE OF NEW JERSEY
PUBLIC EMPLOYMENT RELATIONS COMMISSION**

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April 22, 2004

MEMORANDUM

TO: Commissioners

FROM: Robert E. Anderson
General Counsel

SUBJECT: Report on Developments in the Counsel's Office Since March 25, 2004

Commission Cases

The North Hudson Firefighters Association has withdrawn its appeal in North Hudson Regional Fire and Rescue and North Hudson Firefighters Ass'n, P.E.R.C. No. 04-17, 29 NJPER 428 (¶146 2003), App. Div. Dkt. No. A-002071-03T5. The Commission had affirmed an interest arbitration award establishing the terms and conditions of employment of the parties' initial contract.

The Appellate Division has dismissed with prejudice the appeal in State of N.J. (Dept. of Human Services) and CWA, P.E.R.C. No. 2003-56, 29 NJPER 93 (¶26 2003), App. Div. Dkt. No. A-003951-02T1. The parties settled the case so CWA did not prosecute the appeal.

The Appellate Division has scheduled oral argument for May 5 in City of Trenton and Trenton Superior Officers Association, P.E.R.C. No. 2002-70, 28 NJPER 243 (¶33092 2002), app. pending, App. Div. Dkt. No. A-5865-01T3. The Commission dismissed an unfair practice charge alleging that the City discriminatorily refused to appoint Joseph Constance as police chief because of his Association activity.

The Appellate Division has scheduled oral argument for May 12 in Franklin Tp. Bd. of Ed. and Franklin Tp. Ed. Ass'n, P.E.R.C. No. 2003-58, 29 NJPER 97 (¶27 2003), app. pend., App. Div. Dkt. No. A-004242-02T3. The Commission declined to restrain binding arbitration of a grievance asserting that the Board violated an emergency class coverage clause when it denied extra compensation to a special education teacher required to teach a combined class of third and fifth grade students.

The union has filed an action seeking to enforce the interim relief order in Middletown Tp. and Middletown Tp. PBA Local 124, I.R. No. 2004-12, __ NJPER __ (¶__ 2004). The designee's order required the employer to restore the Wednesday payday and method of paying salaries to all police officers below the rank of sergeant. The Commission has moved to intervene in this action and is supporting enforcement. Don Horowitz is representing the Commission.

The Appellate Division has denied leave to appeal the interim relief order in Gloucester Cty. and CWA Local 1085, I.R. No. 2004-11, 30 NJPER 62 (¶19 2004). The Commission designee restrained the County from unilaterally eliminating the option of a compressed four-day work week for certain County staff.

The Attorney General has moved to file an amicus curiae brief in Raritan Valley Community College and Raritan Valley Community College Staff Federation/AFT, Local No. 4143, P.D.D. No. 2004-4, 29 NJPER 404 (¶133 2003), app. pend., App. Div. Dkt. No. A-001319-03T5. The Attorney General will defend the constitutionality of N.J.S.A. 34:13A-5.5. That statute authorizes the deduction of representation fees even absent a negotiated agreement under certain conditions.

The Attorney General has issued an advice letter to the Commission concerning its power to enforce N.J.S.A. 34:13A-30. That statute prohibits union officials convicted of certain offenses from representing employees in the New Jersey public sector, but is silent as to how the prohibition is to be enforced. The letter advises the Commission, in response to its inquiry, that it is authorized to issue disqualification orders where relevant to resolving a dispute within its jurisdiction.

Other Cases

In Bonzella v. Monroe Tp., 2004 N.J. Super. LEXIS 116 (App. Div. 2004), an Appellate Division panel held that the employer violated N.J.S.A. 40A:10-23 when it required either a husband or his wife, both of whom had worked for the employer for more than 25 years, to switch from primary to dependent coverage. That requirement also violated the employees' contractual rights; the employer could not take away those rights, earned by 25 years of service, to save costs. The cross-coverage was part of the employees' compensation as established by Gauer v. Essex Cty. Div. of Welfare, 108 N.J. 140 (1987) and Maywood Ed. Ass'n, Inc. v. Maywood Bd. of Ed., 131 N.J. Super. 551 (Chan. Div. 1974).

In Vineland Bd. of Ed. v. Amalgamated Local, App. Div. Dkt. No. A-4584-02T5 (3/29/04), an Appellate Division panel affirmed an order confirming a grievance arbitration award. The award relied on the parties' past practice in determining that bus drivers who worked during July and August 2001 were entitled to be paid at the contract rate effective September 2001. The arbitrator also properly rejected the employer's contention that the bus drivers were substitutes or temporary employees.

In Goodman v. Department of Corrections, 2004 N.J. Super. 119 (App. Div. 2004), an Appellate Division panel upheld the termination of a senior corrections officer for taking cocaine. The Court rejected an assertion that N.J.S.A. 11A:2-13 required dismissal of the charges because the employer did not comply with its mandate to hold a departmental hearing within 30 days of notice of the disciplinary action. The Court reasoned that the Legislature would have expressly mandated dismissal of the charges for non-compliance if it had intended such a severe consequence in every case.

In Hay Group, Inc. v. EBS Acquisition Corp., ___ F.3d ___, 2004 U.S. App. LEXIS 4715 (3d Cir. 2004), the Third Circuit Court of Appeals held that the Federal Arbitration Act does not authorize arbitrators to issue prehearing discovery subpoenas to nonparties. Arbitrators must instead subpoena the nonparties to attend the hearing and bring any documents with them.

REA:aat