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May 17, 2006

MEMORANDUM

TO: Commissioners

FROM: Robert E. Anderson
General Counsel

SUBJECT: Monthly Report on Developments in the Counsel's Office Since April 27, 2006

Commission Cases

_____ The Supreme Court has denied certification in Warren Hills Reg. Bd. of Ed. v. Warren Hills Reg. H.S. Ed. Ass'n, P.E.R.C. No. 2005-26, 30 NJPER 439 (¶145 2004), aff'd, App. Div. Dkt. No. A-001747-04T5 (12/22/05). The Commission held that the Board violated N.J.S.A. 34:13-5.4a (1) and (3) when it terminated its school bus drivers and subcontracted their work to a private company in retaliation for their electing the Association as their majority representative.

A notice of petition for certification has been filed in Passaic Valley Water Commission and CWA Local 1032, P.E.R.C. No. 2005-66, 31 NJPER 121 (¶51 2005), aff'd ___ NJPER ___ (¶___ 2006), App. Div. Dkt. No. A-005195-04T1 (4/21/06). The Commission and the Appellate Division declined to restrain arbitration of a grievance seeking higher pay for an employee who was required to perform work in a higher classification. The employer had argued that Civil Service regulations preempted the compensation claim.

An appeal has been filed in Bergenfield Bd. of Ed and Bergenfield Ed. Ass'n, P.E.R.C. No. 2006-69, ___ NJPER ___ (¶___ 2006). The Commission declined to restrain binding arbitration of an increment withholding that it found to be based predominately on disciplinary reasons.

Other Cases

In ATU Local 880 v. NJ Transit Bus Operations, __ N.J. Super. __ (App. Div. 2006), the Court held that an employer may deduct state and federal withholding taxes from arbitration awards granting reinstatement and back pay to employees who were discharged without just cause. The Court agreed with the reasoning in Social Security Bd. v. Nierotko, 327 U.S. 358 (1946) (treating a back pay award under the NLRA as taxable wages under the Social Security Act) and ATU Local 1317 v. DeCamp Bus Lines, 382 N.J. Super. 418 (Law Div. 2005) (applying Nierotko to an arbitration award).

In Borough of Emerson v. Emerson PBA Local 206, Docket No. BER-C-62-06 (4/28/06), Judge Doyne confirmed a grievance arbitration award requiring the Borough to pay a newly hired police officer with PTC certification on step 2 of the salary guide. The arbitrator held that the Borough was equitably estopped from insisting that the police officer be paid at step one since the chief had assured him at the interview that he would be hired at step two and the Business Administrator, who was present, did not contradict him. The Court holds that the arbitrator properly applied this doctrine and that the police chief was an agent of the Borough and had apparent authority to bind it.

In Febres v. Camden Bd. of Ed., 2006 U.S. App. LEXIS 9687 (3d Cir. 2006), the Third Circuit Court of Appeals held that the Camden Board of Education was not an “arm of the state” immune from suit under the Eleventh Amendment to the United States Constitution. The Court reinstated a lawsuit in which custodians fired for excessive absenteeism asserted that the Board had violated the self-care provisions of the federal Family and Medical Leave Act.

REA:aat