



**STATE OF NEW JERSEY
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January 17, 2007

MEMORANDUM

TO: Commissioners

FROM: Robert E. Anderson
General Counsel

SUBJECT: Monthly Report on Developments in the Counsel's Office Since December 14, 2006

Commission Cases

In Piscataway Tp. and Piscataway Township PBA Local 93, P.E.R.C. No. 2005-79, 31 NJPER 176 (¶71 2005), aff'd, App. Div. Dkt. No. A-6488-04T1 (12/21/06) (copy attached), an Appellate Division panel affirmed the order issued to remedy the employer's failure to negotiate before implementing two new procedures in a promotion policy. The Commission declined to order the Township to rescind the promotions of four police officers to sergeant, reasoning that the record did not indicate that the results of the promotional process would have been any different had the PBA's position on the two issues been incorporated into the promotional policy.

Other Cases

In Alpha Bd. of Ed. v. Alpha Ed. Ass'n, 188 N.J.596 (2006) (copy attached), our Supreme Court reversed an unpublished Appellate Division decision vacating a grievance arbitration award. That award held that the board committed a continuing violation of the parties' contract when it denied paid health insurance to part-time employees and ordered the board to pay for such insurance prospectively. The Chancery Division confirmed the award, but

the Appellate Division concluded that the continuing violation doctrine did not apply and thus vacated the award. The Supreme Court, by a 5-1 majority, concluded that the arbitrator could reasonably apply the continuing violation doctrine. It also found that a recent amendment to section 5.3 of the Employer-Employee Relations Act overruled Camden Bd. of Ed. v. Alexander, 181 N.J. 187 (2004), and established a presumption of contractual arbitrability in the New Jersey public sector. The Court remanded the case to the Appellate Division to determine whether the arbitrator's decision to award health benefits to part-time employees was reasonably debatable. Judge Rivera-Soto dissented, disagreeing with the majority's analysis of both the continuing violation doctrine and the amendment to section 5.3.

The Supreme Court's Committee on the Unauthorized Practice of Law has held that out-of-state attorneys may participate in arbitrations and mediations in New Jersey, provided they comply with the requirements of RPC 5.5. Opinion 43 (supplementing Opinion 8), 187 N.J.L.J. 123 (1/8/07). That rule requires out-of-state attorneys to register with the Supreme Court Clerk, authorize the Clerk to accept service of process on them, and obey the rules on registrations and fees.

REA:aat