



**STATE OF NEW JERSEY
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February 15, 2007

MEMORANDUM

TO: Commissioners

FROM: Robert E. Anderson
General Counsel

RE: Monthly Report on Developments in the Counsel's Office Since January 25, 2007

Commission Cases

Oral argument has been scheduled for March 6 in Bergenfield Bd. of Ed. and Bergenfield Ed. Ass'n, P.E.R.C. No. 2006-44, 32 NJPER 83 (¶42 2006), app. pending App. Div. Dkt. No. A-004519-05T2. In a case involving several asserted reasons for withholding a teacher's increment, the Commission concluded that the reasons were not predominantly based on an evaluation of teaching performance. It therefore declined to restrain binding arbitration.

Other Cases

In CWA v. State of New Jersey, App. Div. Dkt. No. A-5583-04T1 (2/14/07), the Appellate Division affirmed a grant of summary judgment to the State in a breach-of-contract action. CWA had asserted that the State violated an agreement stating that the parties mutually desired to limit, to the greatest extent possible, the number of "represented employees" who would become unemployed as a result of the anticipated closings of Marlboro Psychiatric Hospital and the North Princeton Developmental Center. The agreement further created a joint "Labor-Management Closings Committee"; called for that committee to make recommendations to the Governor on methods to avoid layoffs; provided a list of methods to be explored; and reserved the State's right

to determine which, if any, recommendations would be implemented and how. The trial court granted summary judgment on the theory that CWA was required to

submit its contractual claims to binding arbitration under the parties' grievance procedure. The Appellate Division panel disagreed with that theory; it found that the claims could not be submitted to binding arbitration since they involved "non-contractual" matters. Nevertheless, summary judgment was properly granted because the grievance procedure provided the exclusive remedy for the alleged violations.

REA:kph