



**STATE OF NEW JERSEY
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February 21, 2007

MEMORANDUM

TO: Commissioners

FROM: Robert E. Anderson
General Counsel

SUBJECT: Supplemental Report on Developments in the Counsel's Office Since
January 25, 2007

Commission Cases

In City of Newark and SEIU, Local 617, P.E.R.C. No. 2007-24, 32 NJPER 342 (¶143 2006), the Commission declined to restrain binding arbitration of a grievance contesting the employer's decision to end a provisional employee's longevity payments and to seek to recoup previous payments. The employer appealed this ruling to the Appellate Division. The Chairman denied a stay of arbitration pending appeal and the employer is now seeking an emergency stay from an Appellate Division judge. The arbitration is scheduled for February 23. Don Horowitz is representing the Commission.

Other cases

In Carmona v. Resorts Int. Hotel, Inc., Dkt. No. A-83-05 (2/21/07), the New Jersey Supreme Court held that to prove a retaliation claim in a LAD case, a plaintiff must prove as a condition precedent that his or her initial complaint of discrimination was filed reasonably and in good faith. The Court read that requirement into the LAD; invoking common sense, it reasoned that the Legislature could not have intended that the LAD "provide a safe harbor to one who files a baseless, meretricious complaint" and that the LAD "cannot protect one who preemptively files a

complaint solely in anticipation of an adverse employment action by the employer." (Slip opin. at 22). The Court also held that the trial court erred in excluding an investigative report as hearsay; such reports are generally not hearsay because they are not offered to show the truth of

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the matters asserted therein, but instead to show a non-discriminatory motivation. Finally, the Court held that the report should not have been excluded as untrustworthy on the ground that it was maintained electronically and could be modified. A systematically-prepared computer record may be admissible as a business record unless the opposing party provides some evidence to question its reliability.

REA;jm

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