



STATE OF NEW JERSEY
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March 21, 2007

MEMORANDUM

TO: Commissioners

FROM: Robert E. Anderson
General Counsel

SUBJECT: Monthly Report on Developments in the Counsel's Office Since February 22, 2007

Commission Cases

An appeal has been filed in Manalapan-Englishtown Regional Bd. of Ed. and Manalapan-Englishtown Ed. Ass'n, P.E.R.C. No. 2007-42, ___ NJPER ___ (¶__ 2007). The Commission declined to restrain binding arbitration of a grievance asserting that the Board did not place a teaching staff member on the proper step of the salary guide given her teaching experience.

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 and sought a stay of arbitration pending appeal. The Court denied that request.

Oral argument has been scheduled for April 25 in Evesham Municipal Utilities Auth. and Teamsters Local Union No. 676, P.E.R.C. No. 2006-78, 32 NJPER 120 (¶56 2006). The Commission held that a proposal concerning retiree health benefits was mandatorily negotiable.

In Somerset Cty. Sheriff's Office and Somerset Cty. Sheriff's FOP Lodge #39, P.E.R.C. No. 2007-33, 32 NJPER 372 (¶156 2006), the Commission affirmed an interest arbitration award on November 21, 2006. N.J.S.A. 34:13A-16f (5) (a) requires that an award affirmed by the Commission be implemented within 14 days unless absent a stay. The employer appealed and asked the Commission to stay the award pending that appeal. That request was denied as was a motion for reconsideration. Two months later, after the FOP filed an action seeking immediate enforcement of the award, the employer filed a motion with the Appellate Division asking for a stay of the award. That motion is pending. In the meantime, Judge Ciccone of the Superior Court in Somerset County has dismissed the enforcement action for lack of jurisdiction given the pending appeal.

Other Cases

In Tarr v. Bob Ciasulli's Mack Auto Mall, Inc., 2007 N.J. Super. LEXIS 54 (App. Div. 2007), the Court, in an opinion authored by Judge Lefelt, held that a jury could not increase a punitive damage award in a sexual harassment suit for the specific purpose of generally deterring others besides the defendant from engaging in the proscribed conduct. The Court distinguished an increased award for that specific purpose from the concept of general deterrence inherent in any punitive damages award. Judge Sapp-Peterson dissented and would have upheld the punitive damages award. The plaintiff thus has a right to appeal this case to the New Jersey Supreme Court.

In Pavon v. UPS, Inc., App. Div. Dkt. No. A-6329-04T2 (2/22/07), a unionized truck driver was discharged for insubordination when he refused to follow company policy deeming visual inspections of trailer coupling devices to be inadequate and instead insisted that uncoupling the trailers for a closer inspection was necessary for safety. An arbitrator sustained the discharge and a federal district court refused to vacate it. The truck driver then filed a CEPA claim in the New Jersey Superior Court. An Appellate Division panel held in part that the arbitration award did not preclude the CEPA claim. It reasoned that the contractual issue before the arbitrator – had the union proved that an “imminent peril” justified the insistence on uncoupling the trailers? - - was different from the statutory issue before the court – did the plaintiff have a reasonable belief that the company's inspection policy violated a federal safety regulation? It also stated that while an arbitrator focuses on the union's claim, a judge would focus on the litigants and the public interest and that the public policy behind CEPA, like the public policy against discrimination, was important enough to prevent contract-based claims from precluding subsequent resolution of statutory claims.

REA:aat