



**STATE OF NEW JERSEY  
PUBLIC EMPLOYMENT RELATIONS COMMISSION**

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April 26, 2007

**MEMORANDUM**

**TO:** Commissioners

**FROM:** Robert E. Anderson  
General Counsel

**SUBJECT:** Supplemental Report on Developments in the Counsel's Office Since  
March 29, 2007

**Commission Cases**

In Somerset Cty. Sheriff's Office and Somerset Cty. Sheriff FOP, Lodge No. 39, P.E.R.C. No. 2007-33, 32 NJPER 372 (¶156 2006), App. Div. Dkt. No. A-1899-06T3, the employer has asked the Appellate Division to stay implementation of an interest arbitration award affirmed by the Commission on November 21, 2006. N.J.S.A. 34:13A-16f (5) requires that affirmed awards be implemented within 14 days absent a stay, but the employer let several months elapse without either implementing the award or seeking a stay from the Appellate Division. There is also an enforcement action pending in the Somerset County Superior Court, with a return date of May 11 on an order to show cause why immediate implementation should not be directed.

**Other Cases**

In New Jersey Turnpike Auth. v. Local 196, IFPTE, \_\_\_ N.J. LEXIS \_\_\_ (copy attached) (2007), the Supreme Court upheld a grievance arbitration award reinstating a toll collector who shot a paintball gun at a passing vehicle while he was driving home from work and was still in uniform. An Appellate Division panel vacated the award on the grounds the public policy required termination for the misconduct, but the Supreme Court reasoned that the focus of a

public policy analysis should be on the remedy ordered rather than the misconduct penalized. The arbitrator imposed a substantial penalty by denying back pay for an employee suspended for 11 months and also conditioned reinstatement on the employee's passing a psychological fitness test and undergoing monitoring. The Court also stressed the importance of the legislative policy favoring final and binding arbitration and concluded that given that policy, an award should not be set aside for other public policy reasons unless the remedy violated a clear mandate of public policy embodied in statute, regulation, or legal precedent.

In IBEW Local Union 629 v. Flynn's Electric, LLC, App. Div. Dkt. No. A-4199-05T2 (4/19/07), an Appellate Division panel affirmed a trial court ruling confirming an award issued by the plaintiff's Labor Management Committee. The award required defendant companies to pay the unions fringe benefits for work they performed pursuant to a collective bargaining agreement between the union and a New Jersey chapter of the National Electrical Contractors Association. The committee was effectively an arbitration panel and the defendants lost their opportunity to present defenses when they walked out of the Committee meeting rather than request a postponement because of late notice or assert that the union had not collected fringe benefits from them for 12 years and thus had waived its right to seek them now.

In Todoaro v. Union Cty., 2007 N.J. Super. LEXIS 118 (2007), an Appellate Division panel held that a prevailing plaintiff who proved she was denied appointment to the position of Union County Superintendent of Weights and Measures because of political discrimination was entitled to either reinstatement in that position or to front pay. The Court concluded that reinstatement should be granted in discrimination cases absent special circumstances and rejected the "rightful place" remedy whereby the trial court had allowed the politically-preferred appointee to remain as the superintendent until another opening arose.

In DeNiscia v. IAFF, App. Div. Dkt. No. A-5367-05T2 (4/20/07), an Appellate Division panel required two suspended officers of the IAFF to exhaust their internal union remedies before filing a court action seeking to overturn their suspensions and also alleging defamation. The suspensions were imposed for supporting a rival organization - - the FMBA. The Court found no reason to think internal union appeals would be futile.

REA:aat  
Attachment