



**STATE OF NEW JERSEY
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September 19, 2007

MEMORANDUM

TO: Commissioners

FROM: Robert E. Anderson
General Counsel

SUBJECT: Monthly Report on Developments in the Counsel's Office Since August 9, 2007

Commission Cases

An Appellate Division panel has affirmed the decision of the Director of Representation in State of New Jersey and Policemen's Benevolent Ass'n Local 105 of the New Jersey State PBA and New Jersey Corrections Ass'n, affiliated with FOP Lodge 200, D.R. No. 2006-18, 32 NJPER 145 (¶66 2006), review denied P.E.R.C. No. 2006-92, 32 NJPER 223 (¶92 2006), aff'd App. Div. Dkt. No. A-5635-05T3 (8/9/07) (copy attached). The Director dismissed the FOP's challenges to a representation election in which the PBA won the right to replace the FOP as the majority representative of State law enforcement officers. The Commission in turn denied the FOP's request for review of the Director's decision. The Appellate Division panel found that the Director thoroughly reviewed the record, made detailed findings, and acted within his discretion. The Court agreed with the following assessment in the Commission's decision:

The Director conducted an appropriate investigation into the eligibility list objection and issued a thorough and thoughtful opinion analyzing and dismissing every objection. . . . Whether the election objections are viewed individually or cumulatively as alleging a pattern of gross

employer negligence, we are satisfied there is no basis or need for reviewing the Director's determination that the FOP did not precisely and specifically show conduct that warranted setting aside the election as a matter of law. N.J.A.C. 19:11-10.3(h).

Other Cases

An Appellate Division panel has upheld a grievance arbitration award ordering the employer to promote a police officer who was arbitrarily denied a promotion to lieutenant. Borough of Glassboro v. FOP Lodge No. 108, 2007 N.J. Super. LEXIS 303 (App. Div. 2007) (copy attached). The grievant scored higher than the promoted officer in the first two phases of the promotion process, but fell behind in the rankings after the third and final phase, a subjective oral examination. The arbitrator found that the promotion denial was arbitrary because the employer (which was not a civil service community) had not explained how the last phase had caused the grievant to fall behind. The Court concluded that the arbitrator's conclusion was reasonably debatable. It rejected the employer's argument that it could legally consider the grievant's non-residency against him; that factor did not come into play since the scores in the first two phases were not the same. It also rejected arguments that the award would contravene the public interest by making objective tests the only permissible standard; subjective tests may still be used so long as an employer articulates the basis upon which it scores such tests.

In re Richard Holland (Rowan Univ.), App. Div. Dkt. No. A-0338-05T2 (9/7/07), overturned a Merit System Board upholding the termination of a groundskeeper for "conduct unbecoming a public employee." The conduct led to criminal charges before the employee was hired. After the employee was hired, he was convicted, but the conviction was overturned. The Court holds that a charge of "unbecoming conduct" must be limited to conduct undertaken while the employee was actually engaged in public employment.

REA:aat
Attachment