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September 27, 2007

MEMORANDUM

TO: Commissioners

FROM: Robert E. Anderson, General Counsel

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

Attached is an Appellate Division decision upholding the conviction of a union organizer for violating a Lawrence Township ordinance. State v. DeAngelo, 2007 N.J. Super. LEXIS 304 (App. Div. 2007). The ordinance prohibited the display of inflated signs to attract the attention of pedestrians and motorists. The organizer violated the ordinance when he hoisted a 10-foot tall inflatable rat in front of Gold's Gym as part of a labor protest against the employer. The Court rejected the organizer's arguments that the ordinance was preempted by the National Labor Relations Act; violated the organizer's constitutional right of free speech; was void for vagueness; and was selectively enforced.

Judge Sabatino dissented from the majority's conclusion that the ordinance did not violate the right to free speech. He found that it was not content-neutral given an exception permitting grand-opening signs. For example, he thought the ordinance would permit a Disney retail store to have a grand opening with a rat-shaped balloon depicting a character from the movie *Ratatouille*. He thus would have remanded the case for the development of a record on whether there were sufficiently compelling reasons to justify the disparity between a grand-opening sign and other signs and whether the grand-opening exception, if unconstitutional, could be severed from the sign ordinance without compromising the aims of that ordinance.

In Hedges v. Manchester Reg. H.S. Dist. Bd. of Ed., Dkt. No. PAS-L-4797-05 (8/31/07), a school board refused to allow a tenured teacher taking a child-rearing leave to return to work until the beginning of the next school year. The teacher filed a lawsuit asserting that not allowing her to return to work in April, when the leave ended, violated both the Law Against Discrimination and the collective negotiations agreement. (That agreement did not provide for arbitration). The relevant contract clause provided:

g. (1) Maternity/Paternity Child-Rearing Leave and Maternity Disability

(a) Maternity/Paternity Leave (Child-Rearing) shall be granted to a teacher, without pay, upon application to the Board specifying the dates upon which the teacher wishes the leave to commence and terminate; and with the provision that a return from such leave shall be at the beginning of the school year next following the granting of leave for a non-tenured staff member, and an additional school year shall be granted upon the request of a teacher who is under tenure. The Board is not required to continue employment of a non-tenured teacher beyond the year in which the leave is taken.

Judge Joseph Riva of the Superior Court in Passaic County granted summary judgment to the Board on the LAD claim because males as well as females could take child-rearing leaves, subject to the same contractual limits and conditions. But the Court denied summary judgment to both parties on the question of whether the teacher had a contractual right to return to work mid-year. The Court found the clause to be ambiguous and past practice to be relevant.

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Attachments