



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

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April 16, 2008

**MEMORANDUM**

**TO:** Commissioners

**FROM:** Ira W. Mintz  
General Counsel

**SUBJECT:** Monthly Report on Developments in the Counsel's Office Since March 27, 2008

**Commission Cases**

The Bergenfield Education Association has filed an appeal in Bergenfield Bd. of Ed., P.E.R.C. No. 2008-47, 34 NJPER 44 (¶13 2008). The Association had sought a determination that SHBP regulations preempt a prescription premium sharing clause in the parties' current collective negotiations agreement. The Commission found that a new law supersedes existing SHBP regulations and allows local employers to negotiate over sharing the cost of coverage. That law also permits implementation of premium sharing clauses in existing agreements.

**Other Cases**

In a 4-2 decision, the Supreme Court reversed a decision of the Port Authority Employment Relations Panel that had found an improper practice when the Authority leased its international terminal at JFK to a private entity and work that had been performed by Port Authority police officers was given to security personnel employed by the private entity. In re Port Authority of New York and New Jersey, \_\_ N.J. \_\_, 2008 N.J. LEXIS 313 (2008). The Court held that the Panel is an administrative agency and its decisions are subject to a deferential standard of review; but that no special deference was owed to the Panel's decision in this case. According to the Court, the Panel "did not follow the law" because its Panel Instruction limited its jurisdiction and specified that "the mission and management responsibilities of the Port Authority, including its organization, staffing, planning, operating and financial policies, shall not be subjects of negotiation with employee organizations." The Court also stated that even if

the Panel had jurisdiction, the record did not support a finding that unit work was transferred; and even if the work was transferred, there was no obligation to bargain under the applicable legal standards because the Port Authority fundamentally altered its basic operations, the transaction involved a capital investment not amenable to bargaining, and the removal of the work did not have a significant impact on the police officers. The Panel was represented by the Commission's then-General Counsel, Bob Anderson.

The Appellate Division remanded a Chancery Court decision finding that an arbitrator erred in not honoring a school board's right to terminate an individual employment contract on three weeks' notice. Ocean City Bd. of Ed. v. Ocean City Educational Supportive Staff Ass'n and Spencer, App. Div. Dkt. No. A-2838-06T2 (3/27/08). The appellate court ordered the lower court to reconsider its decision in light of the Supreme Court's decisions in Northvale and Pascack Valley (See November 13, 2007 General Counsel's Monthly Report).

The Appellate Division affirmed a decision of the Commission of Education revoking the teaching certificates of a non-tenured teacher whose mid-contract termination was sustained in binding arbitration. In re Revocation of the Teaching Certificates of Michael Nieves by the State Board of Examiners, App. Div. Dkt. No. A-2627-06T3 (4/7/08).

In a non-precedential decision, the Third Circuit Court of Appeals held that an alleged discriminatory and retaliatory recommendation by a police chief that was accepted by a borough council was, without more, an inadequate basis to impose municipal liability for a First Amendment claim. Walsifer v. Belmar, 2008 U.S. App. LEXIS 1380 (3d Cir. 2008). The Court also held that an alleged violation of a stipulation of settlement providing for expungement of the police officer's disciplinary record cannot serve as the basis of a claim under 42 U.S.C. §1983 claim.

### **Legislation**

Both houses of the Legislature have passed a bill extending the State's existing temporary disability insurance (TDI) system to provide workers with family temporary disability leave benefits to care for members of the worker's family unable to care for themselves. Assembly Bill 873. The bill provides up to six weeks of TDI benefits for a worker taking leave to provide care certified to be necessary for a family member suffering a serious health condition, or taking leave to be with a child during the first 12 months after the child's birth or placement for adoption with the worker's family. The bill applies to all private and governmental employers subject to the "unemployment compensation law" including local governmental employees who choose to opt out of the regular TDI program.