



STATE OF NEW JERSEY  
PUBLIC EMPLOYMENT RELATIONS COMMISSION

PO Box 429  
TRENTON, NEW JERSEY 08625-0429

[www.state.nj.us/perc](http://www.state.nj.us/perc)

ADMINISTRATION/LEGAL  
(609) 292-9830  
CONCILIATION/ARBITRATION  
(609) 292-9898  
UNFAIR PRACTICE/REPRESENTATION  
(609) 292-6780

*For Courier Delivery*  
495 WEST STATE STREET  
TRENTON, NEW JERSEY 08618

FAX: (609) 777-0089  
EMAIL: [mail@perc.state.nj.us](mailto:mail@perc.state.nj.us)

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**MEMORANDUM**

**TO:** Commissioners

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

**SUBJECT:** Monthly Report on Developments in the Counsel's Office Since February 28, 2008

**Commission Cases**

An Appellate Division panel held oral argument on March 5 in Toms River Tp. v. Teamsters Local 97, P.E.R.C. No. 2007-56, 33 NJPER 108 (¶37 2007), App. Div. Dkt. No. A-4969-06T5. The Commission held that an arbitration award in the union's favor was within the scope of negotiations. The arbitrator ruled that the employer violated the parties' contract when it allocated weekend work hours removing trees to a subcontractor's employees rather than its own employees who removed trees during their regular work hours. We are awaiting a decision.

The Appellate Division will hold oral argument on April 1 in Middletown Tp. and PBA Local 124, P.E.R.C. No. 2007-18, 32 NJPER 325 (¶135 2006), app. pending App. Div. Dkt. No. A-1513-06T3. The Commission held that the Township committed an unfair practice when it eliminated travel/shape-up time for its police officers without first negotiating over that decision with their majority representative.

The Manalapan-Englishtown Regional Board of Education has filed a motion to reinstate its appeal of P.E.R.C. No. 2007-42, 33 NJPER 3 (¶3 2007). The Commission denied the request of the Board for a restraint of binding arbitration of a grievance contesting the salary guide placement of a teaching staff member who returned to work following a disability leave. The Commission held that an employee's placement on a negotiated salary guide is normally mandatorily negotiable and legally arbitrable. At a pre-argument settlement conference last year,

the parties agreed that it was in the interest of judicial economy that the appeal be dismissed without prejudice subject to a renewed appeal after the arbitrator's final determination. The arbitrator has since rendered a decision and the Board's application to vacate the decision was denied by the Superior Court. The Board is now asking the Court to reinstate its appeal of the Commission decision. The Board has also filed a motion to consolidate the PERC appeal with the appeal of the denial of its application to vacate the grievance arbitration award and two related education law appeals.

#### **Other Agency Cases**

The Township of Hopewell has agreed to an extension of time for the Counsel's Office to file an Answer on behalf of an interest arbitrator in a court proceeding contesting the arbitrator's application of N.J.A.C. 19:15-5.7(d) to exclude the public from an interest arbitration hearing absent the parties' agreement to allow the public to attend. The Township is considering whether to withdraw its court action after the Court denied the Township's request to either open the arbitration to the public or to stay the arbitration until the Court decided the merits of the suit. The arbitration proceedings have been completed.

#### **Other Cases**

The Appellate Division reversed a trial court decision upholding an arbitration panel's decision that had found that the union was not contractually entitled to arbitrate the dismissal of a probationary employee. ATU Local 880 v. New Jersey Transit Bus Operations, Inc A-3122-06t3. The responsibility for deciding whether the parties agreed to arbitrate a particular dispute lies with the court.