



STATE OF NEW JERSEY
PUBLIC EMPLOYMENT RELATIONS COMMISSION

PO Box 429
TRENTON, NEW JERSEY 08625-0429

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

September 17, 2008

MEMORANDUM

TO: Commissioners

FROM: Ira W. Mintz
General Counsel

SUBJECT: Monthly Report on Developments in the Counsel's Office Since August 7, 2008

Commission Case

_____ In an unpublished decision, the Appellate Division has affirmed the Commission's decision in Middletown Tp. and PBA Local 124, P.E.R.C. No. 2007-18, 32 NJPER 325 (¶135 2006), 34 NJPER __ (¶ __ App. Div. 2008).

The PBA had filed an unfair practice charge alleging that the Township violated the Act by eliminating the shape-up or travel time and by failing to implement the police chief's determination sustaining a PBA grievance challenging a change in that practice. The Commission ordered the Township to negotiate with the Association over the elimination of this practice, restore the practice of compensating patrol officers for a reasonable period of shape-up or travel time, not to exceed one hour, when called for emergent or immediate overtime, make whole any officer who was denied a reasonable period of shape-up or overtime for emergent or immediate overtime, and post a notice of its violations. The Commission dismissed the allegation that the Township violated the Act by not complying with the police chief's grievance determination.

The Appellate Division affirmed substantially for the reasons set forth in the Commission's decision.

Other Cases

The PBA has filed a petition for certiorari with the United States Supreme Court in In re Port Authority of New York and New Jersey, 194 N.J. 314 (2008). In that case, the New Jersey 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. The Panel was represented by the Commission's then-General Counsel, Bob Anderson. The PBA argues that the New Jersey Supreme Court improperly applied New Jersey law to this dispute involving a bi-state agency.

In CWA v. Rousseau, App. Div. Dkt. No. A-6126-04 (8/22/08), the Court held that Department of Treasury (Division of Investment) regulations authorizing and governing the engagement of external investment managers are invalid. Regulations authorizing investments in private equity funds and hedge funds are valid subject to the standard of care set forth in N.J.S.A. 52:18A-89b.

In In the Matter of Norris, App. Div. Dkt. No. A-0030-07 (8/27/08), the Court reversed a decision of the Merit System Board that had dismissed an appeal of a termination as untimely. The Court concluded that the Board's decision was arbitrary and unreasonable, based on the factual record before it, because it did not "advance the welfare of the public and protect permanent employees in the classified service by preventing their removal except for cause after due notice and hearing." Norris filed his appeal 53 days after he received notice that he was going to be removed.

In Grasso v. FOP Glassboro Lodge No. 108, App. Div. Dkt. No. A-2517-07 (9/4/08), the Court held that the FOP had no duty to represent a retired employee in a dispute with the Borough of Glassboro regarding reimbursement of Medicare insurance costs. The Court held that a union's duty of fair representation does not extend to retirees.

In Spinks et al. v. Township of Clinton, __ N.J. Super. __ (App. Div. 2008) (9/11/08), the Court affirmed a trial court decision granting summary judgment and dismissing complaints of retaliation in violation of plaintiffs' civil rights pursuant to 42 U.S.C. §1983 and unlawful termination based on age in violation of the New Jersey Law Against Discrimination. The Court found that it was the prosecutor, not the defendant police chief that directed an investigation and decided to charge plaintiffs with falsifying documents. It also found that complaints about the administration of the police department and management of its personnel affected plaintiffs and their bargaining unit and were not matters of public concern qualifying as "protected activity" under §1983. The Court stated that plaintiffs and other PBA members had filed an unfair practice charge challenging new promotional procedures. As to the age discrimination claim, the Court ruled that an employer must be free to investigate complaints of employee misconduct without fear of LAD liability and that the investigation initiated by the Township and police chief was not an adverse action. The Court also ruled that the adverse action, plaintiffs' resignations as a condition of their plea agreements, were the prosecutor's responsibility.

In Norenium, et al. v. Multaler, Inc., App. Div. Dkt. No. A-4481-06T (9/11/08), among other things, the Court held that the LAD is the exclusive remedy for acts of discrimination declared illegal under the LAD. Accordingly, the Court dismissed common law claims of sexual harassment, hostile work environment, and retaliation.