



**STATE OF NEW JERSEY
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January 21, 2009

MEMORANDUM

TO: Commissioners

FROM: Ira W. Mintz
General Counsel

SUBJECT: Monthly Report on Developments in the Counsel's Office Since December 18, 2008

Commission Cases

On January 5, 2009 the Borough moved for Leave to Appeal a decision of the Chairman involving the Borough of Paramus and PBA Local 186. The Chairman denied an application for special permission to appeal an interlocutory ruling of an interest arbitrator filed by the Borough. The arbitrator had ruled that the formal arbitration proceeding with the PBA would be limited to the issues listed on the interest arbitration petition, which included wages, but not an employee contribution to medical benefits. The Chairman found that within the framework of the interest arbitration statute and regulations, the arbitrator carefully considered the Borough's arguments and did not abuse his discretion in rejecting those arguments. The Chairman noted that the net economic effect of a wage giveback as a contribution toward medical benefits is the same as a lower across-the-board wage increase and that the PBA had no objection to the Borough adjusting its wage proposal accordingly.

On December 31, 2008, the Township of Teaneck filed an appeal of P.E.R.C. No. 2009-25, which had denied a request for review of D.R. No. 2009-3. In that decision, the Director of Representation certified Local 108, Public Employees Division Supervisory Group, RWDSU, UFCW as the majority representative of a unit of supervisory employees. The Director excluded certain titles as confidential and included, among others, department head titles that the

Township sought to exclude as managerial executives. The Township asserted that it was wrongly denied a fact-finding hearing and that department heads are excludable from representation as a matter of law. The Commission denied the request for review finding that the Township had not established any of the reasons for granting a request for review.

_____The Appellate Division has denied the Trenton Board of Education's motion for Leave to Appeal the interim relief decision in I.R. No. 2009-12. In that case, a Commission Designee granted a request to restrain the Board from ending full-time release time for the Association's President for balance of the 2008-2009 school year.

Other Cases

In Tartaglia v. UBS PaineWebber Inc., ___ N.J. ___ (2008) (12/6/08), the New Jersey Supreme Court reiterated that under Pierce v. Ortho Pharm. Corp., 84 N.J. 58 (1980), an employee has a cause of action for wrongful discharge when the discharge is contrary to a clear mandate of public policy. In this case, it held that nothing in Pierce requires an actual or even threatened external complaint as an element of the cause of action.

In Vitale v. Atlantic Cty. Special Services School Dist., App. Div. Dkt. No. A-1675-07T3 (1/12/09), the Court held that a Veterans' Tenure Act claim was not subsumed within a Law Against Discrimination claim that a teacher had lost at trial. The claims are separate and either one or both could be litigated by the teacher.

In Wilson v. Brown, ___ N.J. Super. ___ (App. Div. 2009), the Appellate Division overturned a trial court order requiring the Governor to turn over e-mails between him and CWA Local 1034 President Carla Katz, some of which occurred while the State was negotiating with the CWA. The Court held that the emails are protected by executive privilege. The Court noted that due to its disposition of the applicability of executive privilege, it did not need to address the argument that the documents fell within the "information generated . . . in connection with collective negotiations" exclusion from the Open Public Records Act.

In Fricano v. Borough of Freehold, App. Div. Dkt. No. A-2280-07T3 (12/17/08), the Appellate Division affirmed a decision of the Merit System Board finding that a probationary police officer had resigned in good standing. The officer was summoned to a meeting with the chief ten months after he was appointed. The chief told him his performance was unsatisfactory and that he would not receive permanent appointment. The officer was given the option of resigning. He resigned but later challenged his resignation, claiming that he had been denied a request for legal representation or to have a PBA representative present and that he resigned under duress and coercion. The Court did not address the alleged denial of representation.