



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

December 9, 2009

MEMORANDUM

TO: Commissioners

FROM: Ira W. Mintz
General Counsel

SUBJECT: Monthly Report on Developments in the Counsel's Office Since November 24, 2009

Commission Cases

_____ The Commission moved to intervene in an enforcement action brought by PBA Local 145 against the Borough of Fort Lee. The Borough had not implemented the terms of the interest arbitration award that was affirmed by the Commission in P.E.R.C. No. 2010-17, 35 NJPER 352 (¶188 2009). The Borough then notified the Court that it was not aware that the Commission believed implementation was required in light of several outstanding language issues. The Borough then announced a schedule to implement most aspects of the award and the Commission withdrew its motion to intervene.

Other Cases

In Alexander v. Seton Hall University, ___ N.J. Super. ___ (App. Div. 2009), the Appellate Division held that, in interpreting the Law Against Discrimination ("LAD"), it will continue to apply the approach of the United States Supreme Court in Ledbetter v. Goodyear Tire & Rubber Co., 550 U.S. 618 (2007). Ledbetter held that a pay-setting decision is a "discrete act" sufficient to trigger the start of the statute of limitations period. Ledbetter determined that precedent prohibited a finding that a discrimination charge could survive if based on a discriminatory act occurring outside of the limitations period if only the effects of that discrimination continued into the limitations period. In response to Ledbetter, Congress amended Title VII to include

provisions known as the Lilly Ledbetter Fair Pay Act of 2009. Among other things, that amendment makes it an unlawful employment practice when an individual is affected by application of a discriminatory compensation decision or other practice, including each time wages, benefits, or other compensation are paid, resulting in whole or in part from a past discriminatory decision or other practice. The Appellate Division in Alexander v. Seton Hall Ledbetter, particularly in the absence of a post-Ledbetter amendment to LAD.

In Ross v. City of Asbury Park, App. Div. Dkt. No. A-0379-08T3/A-2174-08T3 (11/23/2009), the Appellate Division affirmed a workers' compensation court ruling that an employee had suffered compensable mental stress as a result of prolonged exposure to a hostile work environment including sexual innuendo and posting of offensive cartoons by a co-worker that the employer did not investigate after incidents were reported.