



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 16, 2010

MEMORANDUM

TO: Commissioners

FROM: Ira W. Mintz
General Counsel

SUBJECT: Report on Developments in the Counsel's Office Since August 12, 2010

Commission Cases

The Appellate Division has denied leave to appeal from City of Passaic, I.R. No. 2011-2, 35 NJPER 250 (¶93 2010). In that decision, a Commission designee ordered the City to maintain the status quo of providing health benefits to crossing guards hired before July 1, 2003.

The Fraternal Order of Police, Lodge No 93 has filed an appeal from New Jersey Institute of Technology, P.E.R.C. No. 2011-16, __ NJPER __ (¶__ 2011). In that decision, the Commission denied the FOP's appeal from the decision of the Director of Arbitration dismissing its request for appointment of an arbitrator from the Special Disciplinary Arbitration Panel. The Director and the Commission held the FOP's request was untimely.

The City of Asbury Park has filed an appeal from P.E.R.C. No. 2011-17, __ NJPER __ (¶__ 2011). In that decision, the Commission affirmed an interest arbitration award involving the City and PBA Local 6 and PBA Local 6, Superior Officers Association. The City argued that the arbitrator failed to apply and give due weight to the statutory factors and that the delay in the arbitrator's issuance of the award without reopening the record resulted in an award not based on updated financial information. The Commission held that the arbitrator's award is supported by substantial credible evidence, the arbitrator properly addressed the statutory factors, and the City did not show how the evidence, including the evidence it sought to submit if the record was reopened, required that the award be vacated or remanded for reconsideration.

Other Cases

In Winters v. North Hudson Reg. Fire and Rescue, App. Div. Dkt. No. A-1117-09 (8/30/10), the Appellate Division held that doctrine of collateral estoppel did not apply and that two Civil Service Commission determinations upholding the plaintiff's discipline did not bar litigation of plaintiff's claims under the Conscientious Employee Protection Act and the United States Constitution.

In Patterson v. Cannon, App. Div. Dkt. No. A-2152-08T1 (8/24/10), the Appellate Division held that the trial judge may have improperly resolved an issue of fact in defendants' favor, i.e., whether defendant's statements to plaintiff's union representative that any further attempt to pursue a grievance would result in plaintiff's termination, were threats that interfered with plaintiff's due process rights and therefore violated the New Jersey Civil Rights Act, N.J.S.A. 10:6-1 to -2.