



**STATE OF NEW JERSEY
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November 16, 2010

MEMORANDUM

TO: Commissioners

FROM: Ira W. Mintz
General Counsel

SUBJECT: Report on Developments in the Counsel's Office Since October 28, 2010

Commission Cases

The Town of Kearny has appealed from P.E.R.C. No. 2011-37, __ NJPER __ (¶__ 2010). In that decision, the Commission affirmed an interest arbitration award involving the Town and Kearny Firemen's Mutual Benevolent Association, Local No. 18. The Town argued that the arbitrator failed to apply and give due weight to the statutory factors and that the arbitrator should not have ordered a fifth year on the record presented. The Commission held that the arbitrator's award was supported by substantial credible evidence, the arbitrator properly addressed the statutory factors, and the Town had not shown how the evidence required rejecting the arbitrator's award of increases similar to its own settlement pattern.

The Flemington-Raritan Regional Board of Education has appealed from P.E.R.C. No. 2011-28, __ NJPER __ (¶__ 2010). In that decision, the Commission granted, in part, and denied, in part, a request for a restraint of binding arbitration of a grievance filed by the Flemington-Raritan Education Association. The grievance alleges that the Board violated the parties' collective negotiations agreement when it eliminated summer work hours and compensation for certain employees, assigned those employees additional uncompensated work during the school year, and gave negotiations unit work to non-unit employees. The grievance seeks reinstatement of the summer hours, reassignment of the work back to the affected unit

employees, and appropriate compensation. The Commission granted a restraint of arbitration to the extent the grievance challenges the Board's decision to eliminate summer work for ten-month employees, but otherwise denied the request for a restraint.

Other Cases

In NAACP v. North Hudson Regional Fire and Rescue, No. 07-1683 (9/21/10), United States District Court Judge Debevoise found that a residency requirement caused a disparate impact on African-American residents of the tri-county area and that there was no business necessity for the residency requirement. The Judge permanently enjoined the Regional from hiring from a Department of Personnel list until it obtains a new list that expands the residency requirement to include Hudson, Essex and Union counties.