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M E M O R A N D U M

TO: Commissioners

FROM: Counsel Staff

SUBJECT: Report on Developments in the Counsel's Office Since September 15, 2011

Commission Cases

An Appeal has been filed by Vorhees Township from the Commission's decision, P.E.R.C. No. 2012-013, declining to restrain arbitration of a grievance filed by FOP Lodge 56, representing three negotiations units of the Township's police officers. The grievance asserts that the Township violated the present and past collective negotiations agreements between the parties, the Township Employee Manual and past practice when it unilaterally ceased reimbursing current retirees for increased prescription co-pays in the State Health Benefits program.

Other cases

Residency Requirements

Meditz v. City of Newark, 2011 U.S. App. LEXIS 19670 (3rd Cir. 9/28/11)

Meditz, an attorney in the City's law department, challenged the City's residency requirement for non-uniformed employees. He claimed that it has a disparate impact on white, non-Hispanics because the city's population did not reflect the racial make-up of the relevant labor market in the surrounding area. The appeals court reverses the lower court's grant of summary judgment dismissing the case and remands it to the District Court. The appeals court holds that factual issues existed as to how to define the appropriate "relevant labor market" and that, even if the city itself was the relevant labor market, the district court erred in its statistical analysis.

Employee discipline/due process

Ruroede v. Borough of Hasbrouck Heights, 2011 N.J. Super. Unpub. LEXIS 2567 (App. Div. 10/11/11)

While on sick leave from his position as a police lieutenant with Hasbrouck Heights, Ruroede allegedly left his home without authorization, went to a bar in East Rutherford, assaulted a police captain from the Rutherford Police Department, outside the bar, and displayed a handgun he was not authorized to carry. Following an investigation, Hasbrouck Heights, a non-civil service employer, suspended him without pay and charged him with violating departmental rules and regulations, and with conduct unbecoming a police officer and public employee. Ruroede denied the allegations and requested a hearing.

At the municipal-level administrative hearing, the employer presented no eyewitness testimony to establish that Ruroede initiated the altercation and displayed a handgun. Instead, it relied on solely hearsay evidence. In addition Ruroede's counsel failed to appear for the final day of hearing without obtaining approval to withdraw from the case.

Pursuant to N.J.S.A. 40A:14-150, a trial court overturned Ruroede's termination. The Law Division judge concluded that the hearing process was unfair and violated Ruroede's due process rights because he proceeded without legal counsel on the final, pivotal day of the hearing, and was deprived of the opportunity to confront and cross-examine adverse witnesses. The judge entered an order vacating the termination, ordering the Borough to pay back-pay for Ruroede's period of suspension, and placing him on inactive status pending either voluntary resolution of the matter or a new hearing. Affirming the trial court's due process rulings, the Appellate Division holds that a municipality charging an employee with a disciplinary infraction and seeking to impose punishment must establish the truth of the charges by a preponderance of the evidence and that hearsay evidence alone is insufficient.

Ancora State Hospital

Lorraine Gormley v. Latanya Wood-El, et al., N.J. Super. 2011 N.J. Super. LEXIS 188 (App. Div. 10/18/11)

Gormley, an attorney interviewing her client, a patient at Ancora State Hospital, was attacked and allegedly suffered physical and mental injuries as a result of the assault. She filed common law and civil rights claims against Ancora and State officials asserting that her attack was caused by a danger created by the State. The Appellate Court holds that the issue of whether there was a state created danger should be resolved by a jury, but that, under the factual and procedural circumstances of the case, the officials were entitled to qualified immunity.

Weisman v. N.J. Dep't of Human Servs., 2011 U.S. Dist. LEXIS 114593 (D.N.J. 10/5/11)

Weisman, an RN, assigned as a charge nurse at Ancora, a psychiatric facility, alleged that her 2009 termination was in retaliation for her complaints about working conditions. Starting in 2006 she began making complaints about what she perceived to be violations of policies, rules, and regulations at Ancora.. Weisman complained formally and informally about staffing shortages, co-worker misconduct, falsification of documents, false allegations made against Weisman, and violations of written policies to DHS, Ancora and state officials, gave testimony adverse to Ancora at a New Jersey Office of Administrative Law proceeding, and gave a statement to the United States Department of Justice in connection with an investigation into alleged civil rights violations. She also was interviewed by the press which reported her complaints. Just before arbitration of a grievance filed by her union contesting the termination, the parties agreed to change her status from removal to resignation in good standing .

Weisman and her husband then filed a federal court action for injuries allegedly suffered in connection with the termination of Weisman's employment. The court grants in part and denies in part a motion to dismiss filed by the State and Ancora officials. It holds that there is no private right of action under federal civil rights law, but the plaintiffs could maintain a First Amendment claim based on alleged retaliation for whistle-blowing.

Cintron v. State of N.J., 2011 U.S. Dist. LEXIS 111469 (D.N.J. 9/29/11)

The federal court orders enforcement of an agreement to settle sexual harassment claims brought by the plaintiff, an employee of Ancora Psychiatric Hospital. At the time the agreement was made, she expressed no reservations and said she understood its terms. Subsequently she alleged that she felt intimidated and coerced into signing the agreement. The Court rejects these allegations.