July 24, 2003

M E M O R A N D U M

TO: Commissioners

FROM: Robert E. Anderson
       General Counsel

SUBJECT: Supplemental Report on Developments in the Counsel’s Office Since June 26, 2003

Commission Cases

In City of Newark and Police Superior Officers’ Ass’n, P.E.R.C. No. 2003-68, 29 NJPER 121 (¶38 2003), app. pending, App. Div. Dkt. No. A-004617-02T2, the Commission held that a police officer’s claim of entitlement to indemnification for a civil judgment against him could be arbitrated, subject to any public policy arguments being raised in an action to vacate an award against the employer. The City appealed that scope-of-negotiations determination. It also moved to vacate an arbitration award indemnifying the officer and asked the Appellate Division to hold the appeal while the trial court decides whether to vacate the award. That motion was unopposed and has been granted.

Other Cases

In *Eckel v. Middlesex Cty. Sheriff’s Office*, App. Div. Dkt. No. A-1210-01T5 (7/10/03), an Appellate Division panel affirmed a Merit System Board decision sustaining suspensions imposed against an FOP Lodge president and other FOP members who surreptitiously taped conversations with the Sheriff and other superior officers. The employees asserted that the disciplinary charges were brought against them in retaliation for their having testified at an unfair practice proceeding at PERC. The Court agreed with the Merit System Board that the employees had not shown that hostility towards their testimony was a substantial or motivating factor in their suspensions. It does not appear that anyone argued that this type of retaliation claim was within PERC’s exclusive jurisdiction under N.J.S.A. 34:13A-5.4(c) and N.J.S.A. 34:13A-5.4a(4).


REA:aat