



STATE OF NEW JERSEY
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November 29, 2001

MEMORANDUM

TO: Commissioners

FROM: Bob Anderson
General Counsel

RE: Supplemental Report on Developments in the Counsel's Office Since October 25, 2001

Commission Appeals

An Appellate Division panel has reversed in part and affirmed in part the Commission's scope-of negotiations rulings in State-Operated School Dist. of the City of Newark and City Ass'n of Supervisors and Administrators, P.E.R.C. No. 2000-51, 26 NJPER 66 (¶310241999) and P.E.R.C. No. 2001-10, 26 NJPER 368 (¶31149 2000), rev'd in part and aff'd in part, App. Div. Dkt. No. A-6972-99T3 (11/28/01 (copy attached)). The Court reversed the Commission's ruling that a school board and a majority representative could legally agree that employees would receive five days of paid family leave a year, subject to those days being deducted from an employee's accumulated sick leave days that were granted by contract rather than by N.J.S.A. 18A:30-2. The Court held that it was immaterial whether the sick leave days stemmed from the contract or the statute and that given the statutory definition of sick leave, sick leave days can only be used for personal illness rather than family illness. See In re Hackensack Bd. of Ed., 184 N.J. Super. 311 (App. Div. 1982), certif. denied, 91 N.J. 217 (1982). The effect of this decision will be that paid family leave will continue to be a mandatorily negotiable subject, but that parties will not be able to agree upon deductions from accumulated sick leave days to offset the expense of the benefit. The Court summarily affirmed the Commission's other rulings that various contract provisions concerning the filling of administrative positions were not mandatorily negotiable.

Other Cases

The United States Supreme Court has held that in determining whether there was good cause to remove a Civil Service employee, the federal Merit Systems Protection Board may consider previous incidents of minor discipline that are still being reviewed through negotiated grievance procedures. *Postal Service v. Gregory*, U.S. (2001). The lower court had barred reliance on disciplinary actions still under appeal. The MSPB will rely on a prior disciplinary action if certain procedural rights were honored and if the action was not clearly erroneous. If, however, that action is later overturned through the grievance proceedings, the MSPB will not rely on that action.

REA:aat