



**STATE OF NEW JERSEY
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May 24, 2007

MEMORANDUM

TO: Commissioners

FROM: Robert E. Anderson
General Counsel

SUBJECT: Monthly Report on Developments in the Counsel's Office Since April 26, 2007

Commission Cases

An Appellate Division panel denied a stay of the interest arbitration award affirmed in Somerset Cty. Sheriff's Office and Somerset Cty. Sheriff FOP, Lodge No. 39, P.E.R.C. No. 2007-33, 32 NJPER 372 (¶156 2006), app. pend., App. Div. Dkt. No. A-1899-06T3. In a concurrent enforcement proceeding before Judge Ciccone in the Somerset County trial court, the County agreed to implement the award once a stay was denied.

Judge Charles of the Hudson County Superior Court enforced a subpoena duces tecum issued to the City of Hoboken in an interest arbitration proceeding with PBA Local No. 2. Don Horowitz represented the Commission in obtaining enforcement of the subpoena issued by the arbitrator, a special officer of the Commission.

The City of Newark has withdrawn its appeal in City of Newark and Service Employees Int. Union, Local 617, P.E.R.C. No. 2007-24, 32 NJPER 342 (¶143 2006), App. Div. Dkt. No. A-2008-06T3.

Other Cases

An Appellate Division panel affirmed a decision of the Merit System Board rejecting an employee's claim that he should have been given seniority credit for the 14 weeks he spent as a corrections officer recruit trainee. In re John Hogan, Correction Sergeant (PS56131), Dept. of Corrections, App. Div. Dkt. No. A-4475-04T5 (5/4/07). The employee relied upon an arbitration award determining that the Department of Corrections violated its collective negotiations agreement when it denied such seniority credit, but the MSB held that its regulations prohibited granting credit for time spent in a temporary appointment. The Court agreed.

In Azzara v. Waterford Tp., 2007 N.J. Super. LEXIS 120 (App. Div. 2007), the Court held that a police officer hired under the alternate route authorized by the Police Training Act, N.J.S.A. 52:17B-66 to 77.6, may be subjected to a probationary period during which the officer may be fired without cause. In effect, the officer begins a working test period on the date of a regular appointment, thus allowing the department to evaluate the officer's job performance before the officer receives permanent status.

In New Brunswick Ed. Ass'n v. New Brunswick Bd. of Ed., App. Div. Dkt. No. A-6586-05T1 (5/8/07), the Court reversed a trial court order enforcing an arbitration award. The arbitrator found that the board violated the parties' just cause clause by transferring the teacher from a project liaison position to an ESL position in the high school for disciplinary reasons and ordered the board to return her to her project liaison position. The board did so, but on the same day transferred her again to an ESL position in the middle school given an alleged shortage of ESL teachers. The trial court enforced the award "as written" and directed the board to return the teacher to her project liaison position. But the Appellate Division panel ruled that a hearing was needed on the reasons for the second transfer to an ESL position and the transfer should not be set aside if those reasons were not disciplinary. The case was remanded to the trial court to determine whether it or an arbitrator should conduct the hearing. The Appellate Division cited N.J.S.A. 34:13A-25 providing that transfers of school board employees "shall not be mandatorily negotiable except an employer shall not transfer employees for disciplinary reasons." But the Court apparently was unaware of N.J.S.A. 34:13A-27, providing that the Commission shall determine whether a transfer was for disciplinary reasons or not.

An Appellate Division panel has affirmed a trial court opinion ordering a Board of Freeholders to fund the Prosecutor's application for salary increases for employees not governed by existing collective negotiations agreements, but denying the Prosecutor's application for salary increases for employees covered by such agreements. In re Application of Taylor, 2007 N.J. Super. LEXIS 140 (App. Div. 2007), aff'g 2006 N.J. Super. LEXIS 353 (Law Div. 2006). Judge William C. Todd, III determined that the Prosecutor could not seek to reopen the contracts to give a one-time increase in salaries to negotiations unit employees so as to be commensurate with the statewide salary averages of other Prosecutor's Offices; he rejected the Prosecutor's argument that the Board of Freeholders usurped the Prosecutor's authority to negotiate salaries and did not negotiate in good faith.

The New Jersey Supreme Court has granted certification in I/M/O The Alleged Improper Practice Under Section XI, Paragraph A(d) of the Port Authority Labor Relations Instruction; IP 97-28, Final Decision and Order of the Port Authority Employment Relations Panel, App. Div. Dkt. No. A-3134-04T2 (12/8/06), certif. granted (5/16/07). The Appellate Division agreed with the trial court and the Panel that the Authority committed an improper practice when it did not negotiate with the Port Authority PBA before transferring negotiations unit work -- patrolling areas outside and inside the JFK International Terminal -- from police officers to private security guards. The Court stressed the narrow standard of review and found that the Panel's findings and conclusions of law reached thereunder were unassailable.

New Laws

_____The Governor has signed S17 into law. That law implements recommendations of the Joint Legislative Committee on Public Employee Benefits Reform.

Beginning in section 1, the statute establishes a defined contribution retirement program for certain nonunion State employees, such as elected officials and gubernatorial appointees, appointed after the statute's effective date.

Section 21. The Division of Pensions and Benefits shall investigate increases in compensation reported for pension credit that exceed reasonably anticipated annual compensation increases for members of the retirement system based upon consideration of the CPI, the table of assumed salary increases recommended by the system's actuary, and the annual percentage increases of salaries as indicated from PERC or through other reliable industry sources of information regarding average annual salary increases.

Sections 42, 43 and 44. The payment of supplemental compensation based upon unused sick leave is limited to \$15,000 for elected officials, gubernatorial appointees or employees appointed by a local governing body or school board, except that an employee who, on the effective date of the statute or upon the expiration of a collective negotiations agreement in effect on that date has accrued unused sick leave shall get accumulated leave or \$15,000, whichever is higher. Supplemental compensation shall be payable only upon retirement from a pension plan.

Section 45. Vacation leave for the same group of employees is also limited to the year earned or the next year, absent a state of emergency. But a grandfather provision covers those who have accrued vacation leave.

Section 47. The sick leave and vacation provisions shall not be construed as affecting the provisions of any collective negotiations agreements in effect on the effective date of the statute.

Section 48. Employees of all employers in the SHBP may now waive health benefit premiums if they are otherwise eligible for health care coverage. The payment in consideration of the waiver remains in the sole discretion of the employer, but cannot exceed 50% of the

amount saved. The decision to allow a waiver and the payment are not subject to the collective bargaining process.

REA:aat
Attachment