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February 17, 2010

MEMORANDUM

TO: Commissioners

FROM: Ira W. Mintz
General Counsel

SUBJECT: Monthly Report on Developments in the Counsel's Office Since January 27, 2010

Other Court Cases

_____ In Lenape Reg. H.S. Dist. Bd. of Ed. v. Lenape Dist. Support Staff Ass'n, App. Div. Dkt. No. A-3240-08T3 (2/16/10), the Appellate Division affirmed a trial court order staying arbitration of a grievance challenging the non-renewal of a non-tenured custodian on the ground that the "termination" violated the dismissal procedure set forth in the collective negotiations agreement. Citing the presumption favoring arbitration of grievance found in N.J.S.A. 34:13A-5.3, the Court first found that the grievance procedure specifically excluded matters "where the Board is without authority to act"; "that involve the sole and unlimited discretion of the Board"; or "that are by law beyond the scope of the Board's authority." The Court also found that the contract applies the grievance procedure to a non-probationary employee who is "suspended, terminated or reduced in compensation without just cause[.]" The Court concluded that these instances did not apply to the non-renewal of an expired contract. The Court found that the employee was neither terminated, discharged or dismissed and that its review of the contract discerned no terms governing the non-renewal of a non-tenured employee's contract. The Court rejected the Association's argument that the question of whether the grievance falls within the scope of the contract is for the arbitrator to decide. Finally, the Court found that the statute governing renewal of non-tenured employees states that if renewal is not recommended by the superintendent, as in this case, the employee's contract shall be deemed non-renewed. The Court concluded that renewal of the non-tenured employee's contract in this instance was discretionary, an act which, as a general rule, is not grievable as a disciplinary action under collective agreements.

In Smith v. Hudson Cty., App. Div. Dkt. No. A-1762-08T2, A-2507-08T3, A-2518-08T3, the Appellate Division held that effective July 1, 2010, government agencies may not charge requestors more than the "actual costs" of photocopying government records.

Legislative Bills of Interest

Senate Bill No. 2 would make various pension system changes concerning eligibility, retirement allowance formula, compensation definition, position eligible for service credit, non-forfeitable rights, enrollment waiver, prosecutors part, PFRS special retirement and employer contributions.

Senate Bill No. 3 would make various changes to the State Health Benefit Program and School Employees Health Benefit Program concerning eligibility, cost sharing, choice of plan, application of benefit change, waiver of coverage, and multiple coverage. The bill would require, after its effective date and the expiration of any application collective negotiations agreement, that active employees of the State, local government, and board of education contribute 1.5% of base salary toward the cost of the SHBP and the SHBP. The contributions would also apply to employees who become members of a State or local retirement system on or after the bill's effective date.

Senate Bill No. 4 would make various changes concerning payment to public employees for unused sick leave, sick leave injury in State service, and PERS and TPAF disability retirement. Payment for unused sick leave in local government and school districts would be limited to \$15,000 for new employees.