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February 24, 2011

MEMORANDUM

TO: Commissioners

FROM: Counsel Staff

SUBJECT: Report on Developments in the Counsel's Office Since February 3, 2011

Commission Cases

The Appellate Division has denied a motion for leave to appeal from Essex County and PBA Local 183, I.R. No. 2011-029, ___ NJPER ___ (¶__ 2011) filed by the Essex County Sheriff and Essex County. The employers sought review of an interlocutory decision issued by a Commission designee in an unfair practice case. The Court's order, with its supplemental comments, is enclosed.

An appeal has been filed by the employer in Franklin Township and Franklin Tp. SOA, P.E.R.C. No. 2011-59, ___ NJPER ___ (¶__ 2011). This case involves the same issue as Franklin Tp. and Franklin Tp. PBA Local No. 154, P.E.R.C. No. 2011-48, ___ NJPER ___ (¶__ 2010), app. pending, App. Div. Dkt. No. A-2313-10T1.

Other Cases

Petersen v. Township of Raritan, ___ N.J. Super. ___ (App. Div. Feb 9, 2011). On his retirement effective August 1, 1999, a police officer choose to be covered by a traditional indemnity plan rather than a point of service (POS) plan. At that time there was no cost to officers retiring with 25 years or more of service for either of the coverages.

In June 2008, the employer eliminated the traditional indemnity plan for any “future enrollees.” It advised both current and already retired employees that they could either receive the POS plan without cost or remain in the traditional plan by paying any premium costs that exceeded the premium paid by the employer for the POS plan.

Interpreting the 1997-1999 collective negotiations agreement, the Court noted that it provided that retirees with 25 years of service “shall continue to receive all health and medical benefits provided by the employer for the remainder of his life. Such coverage shall be provided at the expense of the employer.”

The Court construed the clause as guaranteeing retirees only the medical benefits that the employer provided, as opposed to a specific level of coverage in effect when a qualified officer retires. The decision has been approved for publication.

The Appellate Division simultaneously issued unpublished opinions in three decisions involving the discipline of New Jersey Transit police: Patrol Officer Jonathan Giles, et al. v. New Jersey Transit Corporation, (A-3852-08 2/23/11); Sergeant Maryelyn Conway, et al. v. New Jersey Transit Corporation, (A-4033-08 2/23/11); and Sergeant Melvin Webb v. New Jersey Transit Corporation, (A-4263-08T2 2/23/11). The Commission has jurisdiction to resolve labor disputes involving New Jersey Transit police officers. See N.J.S.A. 27:25-15.1.

The disputes in these cases arise under the disciplinary section of the statute governing NJT police, N.J.S.A. 27:25-15.1.c. The decisions: address how the 45-day time limit on bringing disciplinary charges should be applied; hold that appeals from disciplinary actions imposed by NJT are to be filed with the Appellate Division of Superior Court as NJT is deemed a State administrative agency; and that internal NJT procedures to review discipline must be exhausted before an officer can appeal a disciplinary sanction.