STATE OF NEW JERSEY
PUBLIC EMPLOYMENT RELATIONS COMMISSION

PO Box 429
TRENTON, NEW JERSEY 08625-0429

www.state.nj.us/perc

ADMINISTRATION/LEGAL
(609) 292-9830
CONCILIATION/ARBITRATION
(609 292-9898
UNFAIR PRACTICE/REPRESENTATION
(609) 292-6780

For Courier Delivery
495 WEST STATE STREET
TRENTON, NEW JERSEY 08618

FAX: (609) 777-0089
EMAIL: mail@perc.state.nj.us

May 18, 2011

M E M O R A N D U M

TO: Commissioners

FROM: Counsel Staff

SUBJECT: Report on Developments in the Counsel's Office Since April 28, 2011

Commission Cases

On May 5, 2011, the Appellate Division of Superior Court affirmed Tp. of Parsippany-Troy Hills and Parsippany Public Employees Local No. 1, P.E.R.C. No. 2011-18, 36 NJPER 326 (¶127 2010). The Court's decision has been approved for publication, __ N.J. Super. __, 2011 N.J. Super. LEXIS 80 (App. Div. 2011) (copy enclosed). The Commission held that the Township engaged in an unfair practice, in violation of N.J.S.A. 34:13A-5.4a(1), when it required an employee to complete a federal Family Medical Leave Act medical certification form when the employee wanted to use paid leave rather than take unpaid FMLA leave. The Commission held that, where the parties have not reached an agreement requiring the use of paid leave concurrently with FMLA leave, and where an employee has declined to take FMLA leave, the employer has neither a managerial prerogative nor a preemptive right to require employees to complete the form. The Court agreed that neither state nor federal family leave laws or regulations required the submission of a medical certification by an employee who was not seeking to use statutory family leave.

Cases Related to Commission Cases

City of Newark v. Service Employees' International Union (Local 617) 2011 N.J. Super. Unpub. LEXIS 1090 (App. Div. 5/2/11). The Appellate Division, in agreement with the trial court, refuses to vacate a grievance arbitration award setting aside major discipline imposed on two City

employees because the City's hearing officer did not render a recommendation on the disciplinary charges within 30 days after the conclusion of the departmental hearing as required by a specific provision of the contract between the City and the SEIU. The legal arbitrability of the issues raised in the grievance arbitration were analyzed by the Commission, in City of Newark, P.E.R.C. No. 2009-2, 34 NJPER 219 (¶74 2008). The Commission declined to restrain arbitration holding that it challenged disciplinary procedures, rather than the merits of the City's action. The Court held that, in setting aside the discipline, the arbitrator did not exceed her authority or rule on the merits of the sanction. The Court quoted the trial judge who had ruled that if the suspensions were not nullified, the provision at issue "would be irrelevant and . . . nugatory language."

Reisman, et. al. v. University of Medicine and Dentistry of New Jersey, 2011 N.J. Super. Unpub. LEXIS 1240 (App. Div. 2011), involves contract claims filed by three high-salaried faculty members against UMDNJ after their compensation packages were cut. The trial court dismissed their claims. One faculty member appealed. The appellant's annual compensation package of $485,000 was reduced by the elimination of a $120,193 "Faculty Practice Guarantee." The court affirms the dismissal of the claim. In University of Medicine and Dentistry of New Jersey, P.E.R.C. No. 2010-12, 35 NJPER 330 (¶113 2009), the Commission, reversing a Hearing Examiner's recommendation, [H.E. No. 2009-3, 34 NJPER 319 (¶116 2008)], held that UMDNJ committed unfair practices by refusing to negotiate with the union representing faculty members over reductions in faculty practice compensation, even though the union had previously acquiesced in changes in faculty compensation made by UMDNJ. Typically, compensation for these faculty members is negotiated between UMDNJ and the individual faculty member at the time of hiring.

Other Cases

Headen v. Jersey City Bd. of Educ., ___ N.J. Super. ___ 2011 N.J. Super. LEXIS 87 (App. Div. 2011). In this class action lawsuit, the Appellate Division upholds a lower court ruling that a civil service law, N.J.S.A. 11A:6-3, did not entitle 10-month food service workers to the vacation leave enumerated in that statute. Even though the Jersey City school district is a civil service employer, the Court's published opinion concludes that the employees are governed by a parallel statute in Title 18A, rather than Civil Service vacation leave statutes and regulations that apply to "political subdivisions."

Policeman's Benevolent Association, Local 124 v. Township of Middletown, 2011 N.J. Super. Unpub. LEXIS 1159 (App. Div. 5/6/11) affirms a grievance arbitration award involving claims for overtime payments by officers who were asked to appear, on a day off, as potential witnesses in a departmental hearing involving the minor discipline of another officer. The officers asked the PBA attorney to subpoena them, but no subpoenas were issued until after the scheduled hearing date. The officers appeared, but were not required to testify because the case was settled. The officers submitted subpoenas in support of their overtime claims. Construing the agreement and applying the facts the arbitrator held that the disciplinary hearing was the type of proceeding eligible for off-duty compensation at time and a half. However, the arbitrator denied the overtime claims

because the officers had not complied with a departmental rule requiring that officers notify the chief in advance that they are being summoned to testify in a proceeding, The chief testified that he was aware of the impending settlement and would have advised the officers that it was unlikely they would have had to come in on their days off. After the award was confirmed in trial court, the PBA appealed. Although noting that the award may appear inconsistent in some respects the Court held that the arbitrator had authority to fill in the gaps by citing the notification rule, ruled the award was based on the essence of the agreement, and was reasonably debatable.

In re Denial of the Application of Giles W. Casaleggio for a Retired Law Enforcement Officer Permit to Carry a Handgun, affirms the denial of an application of a retired Assistant Prosecutor and Deputy Attorney General to carry a handgun. While employed, the applicant had carried a handgun as allowed by law. However, the Court, construing a different statue, holds that assistant prosecutors and DAGs, do not qualify as "full-time member[s] of a State law enforcement agency" for the purpose of obtaining permits to carry handguns. It notes that when the law was passed, the Legislature indicated that it targeted "retired police officer[s]." Citing In re Camden Cty. Prosecutor, 394 N.J. Super. 15 (App. Div. 2007) a decision affirming a Commission ruling [P.E.R.C. No. 2007-9, 32 NJPER 283 (¶117 2006)] that Assistant Prosecutors were not police and were not eligible for interest arbitration, the Court declares, "Stated simply, [assistant prosecutors and DAGs] are not police officers."