



STATE OF NEW JERSEY
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October 22, 2015

TO: Commissioners
FROM: Counsel Staff
RE: Developments in the Counsel's Office Since September 16, 2015

New appeals and Court actions

Clementon B/E and EA, P.E.R.C. No. 2016-10, PERC Dkt. No. SN-2015-041

The Association has appealed the Commission's ruling that, as "Tier Four" of the statutorily set health insurance premium contribution will not be reached until the first year of the parties' next collective negotiations agreement, the Association's proposal to return to a 1.5% contribution level is preempted and that, depending on the length of the next CNA, the Tier Four rate will prevail for the duration of that agreement.

State of NJ and FOP Lodge #91, P.E.R.C. No. 2016-11, PERC Dkt. No. IA-2015-003

Both the State and the FOP appeal from the Commission's decision affirming in part and modifying in part an interest arbitration award establishing the terms of a first contract between the parties. The main issues raised are whether the 2% statutory cap on compensation increases applies and whether the award complied with the cap.

City of Newark and Newark SOA, Motion for Leave to Appeal from I.R. No. 2015-5 Granted 9/24/15, PERC Dkt. No. CO-2014-157, App. Div. Dkt. No. A-0423-15T1

With the granting of this motion, there are four pending appeals from interim and final Commission decisions holding that the City engaged in unfair practices when, during negotiations for a successor agreement, it (1) changed the time, set by an expired CNA, for paying retiring officers accumulated compensation, and (2) repudiated rulings made by its

designated grievance adjustment representatives sustaining the SOA's claims. One of these appeals was argued before the Appellate Division of the Superior Court on October 14. A motion to bring a fifth case to the Court is pending.

Belleville Ed. Ass'n and Belleville B/E, Verified Complaint and Order to Show Cause to enforce Order issued in P.E.R.C. No. 2015-079 filed with Superior Court in Essex County.

Both the Board and the Association have appealed this case which held: (1) the Board was obligated to negotiate over issues severable from its decision to institute a comprehensive audio and video surveillance system, including personal ID cards that track student and staff movements, and (2) the Board engaged in discriminatory conduct by punishing an Association official who actively protested the system and sought to negotiate its implementation. The Association has filed an application to enforce the portion of the order directing the Board to post a Commission-prepared "Notice to Employees" describing the violations of the Act.

Cases Related to Commission Decisions

Refusal by Attorney General to make provisional promotions of state troopers permanent

State Troopers Fraternal Ass'n of New Jersey v. New Jersey, 2015 U.S. Dist. LEXIS 124702

In P.E.R.C. No. 2014-80, 40 NJPER 560 (¶179 2014) the Commission granted a restraint of arbitration of a grievance challenging the removal of several state troopers from positions to which they had been provisionally promoted. Following the Commission's ruling, the unions representing the troopers and a non-commissioned officer filed a lawsuit in federal court asserting federal and state claims. The federal court opinion recites that the State Police Superintendent had sought to promote the officers, but that the Attorney General ordered they be removed from the acting assignments. A U.S. district judge grants the State's motion to dismiss the federal constitutional and statutory claims finding, inter alia, that the removal of the officers from their promotional positions, does not necessarily preclude them from obtaining promotions in the future. The Court declines to exercise jurisdiction over claims that are allegedly grounded in state law.

State Troopers Fraternal Ass'n of New Jersey v. New Jersey, 2015 U.S. Dist. LEXIS 124702

The Appellate Division of the Superior Court, ruling on the same dispute considered by the federal court, declines to issue a final ruling in an appeal challenging the Attorney General's directive to remove the troopers from their provisional promotions. The Court notes that the Attorney General did not provide a statement of reasons from his actions and states that the Attorney General should do so or provide the legal authority for asserting that he has no obligation to state the basis for declining to promote the troopers.

Arbitration Award Restoring Negotiated EMT Differential Upheld

In re Twp. of Edison, 2015 N.J. Super. Unpub. LEXIS 2252

The Appellate Division of the Superior Court upholds a trial court ruling confirming an arbitration award holding that EMT/firefighters should continue to receive a pay differential. The award was issued after the Commission declined to restrain arbitration, [P.E.R.C. No. 2013-89, 40 NJPER 56 (¶21 2013)] a ruling affirmed on appeal by In re Twp. of Edison, 2014 N.J. Super. Unpub. LEXIS 2946. The arbitrator found that the Township's action in discontinuing the payments violated a 20-year practice. In addition, IAFF presented the testimony of several firefighter/EMTs who testified that, in spite of the fact that civilian EMTs were now available, the thirty-six firefighter/EMTs in the rotation continued to respond to medical calls and perform EMT duties. Township payroll records confirmed that evidence. The Court also rejected the Township's assertion that the arbitrator was not impartial because he had criticized the legal reasoning of a decision cited to him.

Other Cases

In small municipalities promotions are to be made from current members of police force

Williams v Borough of Clayton, ___ N.J. Super. ___, 2015 N.J. Super. LEXIS 170

In a published, thus precedential, decision the Appellate Division of the Superior Court affirms a trial court's declaratory ruling interpreting two statutes governing the promotion of police officers in smaller (i.e. not first class or second class) cities and municipalities which are not civil service jurisdictions. The statutes provide that an otherwise qualified candidate must have served for at least three years with the municipality to be promoted to higher rank, including chief of police, thus barring the appointment of outside applicants. Generally, a public employer has the non-negotiable discretion to fill promotional vacancies with candidates who are not current employees. This decision would probably not affect that principle.

Creation of Camden County Police Dept to replace Camden Police Dept Upheld

Fraternal Order of Police Camden Lodge #1, Inc., et al. v. the County of Camden and the City of Camden, 2015 N.J. Super. Unpub. LEXIS 2408

The Appellate Division of the Superior Court, affirms a trial court order granting summary judgment dismissing a lawsuit filed by the Camden FOP and former Camden police officers laid off contemporaneously with the creation and implementation of the Camden County Police Department (CCPD). The Court rejects the plaintiffs argument that the County and City lacked statutory authority to contract to have the CCPD provide police services for Camden and also holds that the arrangement was not subject to municipal shared services statutes.