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January 17, 2018

TO: Commissioners
FROM: Counsel Staff
RE: Developments in the Counsel's Office Since November 21, 2017

Commission Cases

New Appeals

Ridgefield Park Bd. of Ed. and Ridgefield Park Educ. Ass'n. P.E.R.C. No. 2018-14, App. Div. Dkt. No. A-1694-17T4

Both the Board and the Association filed scope of negotiations petitions, which were consolidated for decision as the issues raised were identical. The Association has appealed the Commission's ruling, which declined to reverse its decision in Clementon Bd. of Ed. and Clementon Ed. Ass'n, P.E.R.C. No. 2016-10, 42 NJPER 117 (¶34 2015), appeal dismissed as moot, 43 NJPER 125 (¶38 2016), regarding when employee contributions toward their employer-provided health care once again becomes a mandatorily negotiable subject. The decision holds that, as in Clementon, Chapter 78 preempts negotiation of a multi-year collective negotiations agreement (CNA) that would reduce employee contribution rates to 1.5% of salary if employees have only reached the tier 4 level of contribution during the first year of that CNA. However, the Commission declines to restrain arbitration to the extent that the Association requested negotiations over the timing and amount of recoupment for underpaid employee health insurance contributions during the term of the successor agreement and the Board declined such a request.

Court Decisions

Employee manual did not give basis for retiree health coverage as CNA excluded them

Howell v. Greenwich Twp. Mayor & Council, 2017 N.J. Super. Unpub. LEXIS 2993 (Docket No. A-4889-15T4)

The Appellate Division of the Superior Court affirms a trial court ruling that Greenwich Township was not contractually obligated to provide health benefits during an employee's retirement.

The Township's collective negotiations agreement, in pertinent part, stated: "The Township agrees to furnish Medical and Dental Insurance to its present employees and their eligible dependents." The Court said that nothing in the CNA provided that retired employees were entitled to health insurance upon retirement. The Agreement also contained a "zipper" (complete understanding between the parties) clause.

The Township Personnel Policies and Procedures Manual (Manual) and an Employee Handbook both provided "Employees who retire with twenty-five years of service to the Township may continue to receive paid health insurance coverage." The Court found that as both the Handbook and Policy Manual contained clear disclaimers, they did not bind the Township to provide retirement coverage.

Using private employee for unit work violated recognition clause; employer estopped from making negotiability challenge post-arbitration

City of Millville v. New Jersey Civ. Serv. Ass'n, 2018 N.J. Super. Unpub. LEXIS 14 (Dkt No. A-1324-16T2)

The Appellate Division of the Superior Court affirms a trial court decision confirming an arbitration award. The arbitrator found that the City violated its collective negotiations agreement with the New Jersey Civil Service Association (NJCSA) when a Board of Commissioners member used an employee from her private company to perform work exclusively performed by NJCSA unit members. During oral argument before the trial court, the City urged the court to remand the matter to PERC for a scope of negotiations determination. The trial court rejected that argument, finding that the City was estopped from pursuing, post arbitration, a scope of negotiations determination from PERC because the City had elected instead to proceed by way of arbitration.

Affirming the trial court ruling, the Appellate Division said:

We determine that there is a clear preference for PERC to make scope determinations before arbitration. In Ridgefield Park Education Association v. Ridgefield Park Board of Education, 78 N.J. 144, 155 (1978), the Court concluded that the proper process for a scope petition is to file the petition before arbitration. To allow parties to raise scope of negotiations issues after arbitration would defeat the purpose of arbitration and foster litigation. “Arbitration should spell litigation's conclusion, rather than its beginning.” [New Jersey Turnpike Authority v. Local 196, I.F.P.T.E., 190 N.J. 283, 292 (2007)]. We agree with the motion judge that the proper procedure was for the City to file a scope petition prior to arbitration. To allow otherwise would give the City an improper “second bite at the apple.”