



STATE OF NEW JERSEY
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June 17, 2004

MEMORANDUM

TO: Commissioners

FROM: Robert E. Anderson
General Counsel

SUBJECT: Monthly Report on Developments in the Counsel's Office Since May 27, 2004

Commission Cases

Attached is an affirmance of the Commission's scope-of-negotiations determination in Franklin Tp. Bd. of Ed. v. Franklin Tp. Ed. Ass'n, 29 NJPER 97 (¶27 2003), aff'd App. Div. Dkt. No. A-4242-02T3 (6/10/04). The Commission restrained arbitration of a grievance challenging a school board's decision to combine two classes of third and fifth grade special education students, but declined to restrain arbitration of a claim that the teacher of the combined class was entitled to extra compensation under an emergency class coverage clause. Judges Conley and Carchman affirmed the Commission's decision substantially for the reasons in its opinion. Noting that compensation claims are generally severable from the exercise of managerial prerogatives, the Court holds that the Commission was not required to undergo a minute detailed analysis in concluding that this compensation claim was legally arbitrable given the case law and the circumstances.

An Appellate Division panel has upheld the constitutionality of the 2002 amendments to the representation fee provisions of the Employer-Employee Relations Act. Hunterdon Cty. and CWA Local 1034, P.E.R.C. No. 2003-24, 28 NJPER 433 (¶33159 2002), aff'd __ NJ.Super __ (App. Div. 2004) (copy attached). The amendments to N.J.S.A. 34:13A-5.5 and 5.6 provide that a majority representative may petition the Commission to order the deduction of representation fees from non-member paychecks absent a negotiated agreement and the Commission must order such deductions if the representative can demonstrate that a majority of negotiations unit

employees are dues-paying members and that it has a valid demand-and-return system that can be invoked by non-members to contest the amount of the fees. The Court holds that these amendments serve a valid purpose of increasing labor relations stability and peace by decreasing the number of free riders.

The Court also holds that the Commission had jurisdiction over the petition even though CWA had not tried to negotiate for representation fees after the effective date of the amendments. The Court quoted the labor relation reasons given in the Commission's decision and agreed with the Commission that requiring a new round of negotiations would not have been conducive to good labor relations.

Judge Lehrer of the Monmouth County Superior Court has enforced the interim relief order issued by Commission designee Jonathon Roth in Middletown Tp. and Middletown Tp. PBA Local 124, I.R. No. 2004-12, 30 NJPER 84 (¶30 2004). The order required the employee to restore the previous practice governing the weekly dates for issuing paychecks.

The employer has appealed the Commission's decision in Camden Cty. and Camden Cty. Sheriff's Officers PBA Local 277, P.E.R.C. No. 2004-46, 30 NJPER 33 (¶10 2004), recon. den. P.E.R.C. No. 2004-65, 30 NJPER 133 (¶50 2004). The Commission held mandatorily negotiable successor contract proposals concerning seniority bidding, disciplinary reassignments, and counsel's fees.

Other Developments

The same day that Hunterdon was decided, three State employees filed a lawsuit in the New Jersey federal district court objecting to the constitutionality of the representation fee statute and to the way CWA was collecting and expending fees.

Other Cases

_____ In Camden City Bd. of Ed. v. McGreevey, 2004 N.J. Super. LEXIS 202 (App. Div. 2004), an Appellate Division panel upheld the constitutionality of the Municipal Rehabilitation and Economic Recovery Act, N.J.S.A. 52:27BBB-1 to -65. This statute imposes State oversight of school district governance in financially distressed communities meeting certain statutory criteria. Under this statute, the Governor reviews the minutes of school board meetings and can veto any school board action. The Court holds that this statute does not constitute special legislation simply because it applies only to the Camden school district at present and that the Open Public Meetings Act does not apply when the Governor exercises a veto.

Statutes

_____The Domestic Partnership Act is effective on July 10, 2004. Ch. 246, P.L. 2003. The Act extends certain health and pension benefits to same-sex domestic partners of employees with coverage in the State Employer group of the State Health Benefits Program.

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Attachments