



STATE OF NEW JERSEY
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April 21, 2005

MEMORANDUM

TO: Commissioners

FROM: Robert E. Anderson
General Counsel

SUBJECT: Monthly Report on Developments in the Counsel's Office Since March 31, 2005

Commission Cases

_____ The employer has appealed the Commission's decision in Hillsborough Bd. of Ed. and Hillsborough Ed. Ass'n, P.E.R.C. No. 2005-54, __ NJPER __ (¶__ 2005). The Commission held that the Board violated N.J.S.A. 34:13A-5.4a(1) and (5) when it did not negotiate with the Association regarding waivers of health insurance benefits and instead dealt directly with part-time clerical assistants and obtained waivers from them. The Commission ordered the Board to void the waivers and waive any contractual timeliness defenses should the Association seek binding arbitration of a grievance claiming reimbursement for health benefits for employees who signed waivers.

Other Cases

_____ In Aristizibal v. City of Atlantic City, Dkt. No. ATL-L-289-05 (3/17/05), Judge Valerie Armstrong permanently enjoined the City from proceeding with disciplinary hearings against police officers accused of participating in a "sick-out" in support of negotiations demands in August 2004. The Court held that the City violated the requirement in N.J.S.A. 40A-14-147 that any complaint charging a police officer with violating an internal rule or regulation be filed no later than the 45th day after the date on which the person filing the complaint obtained sufficient information to bring charges. In this case, the Court concluded that there were valid reasons as of August 23, 2004 for considering disciplinary charges against officers who failed to report to work on the two previous days; that an immediate investigation should have been conducted; that

the City Administrator did not have statutory authority to initiate immediate disciplinary actions since N.J.S.A. 40A:14-118 vests disciplinary authority in the chief of police; and that the pendency of Chancery Division proceedings seeking an injunction against the sick-out and possible sanctions did not justify a delay until November in starting that investigation. The Court also laid out these six principles for applying the 45 day rule under N.J.S.A. 40A:14-147:

1. The 45-day period runs from the date upon which the person responsible for the filing of the disciplinary complaint receives sufficient information upon which to base a complaint.
2. The statute contemplates that an investigation may be necessary before a decision can be made as to whether a basis exists to initiate disciplinary charges. However, extensive bureaucratic delay in conducting investigations and bringing disciplinary charges is unacceptable.
3. The 45-day rule applies to the filing of a disciplinary complaint, rather than the date of the service of the complaint upon the police officer.
4. The intent of the statute is to protect law enforcement officers from an appointing authority unduly and prejudicially delaying the imposition of disciplinary action.
5. The 45-day time limit does not apply if an investigation of a police officer for violation of the internal rules or regulations is included directly or indirectly with a concurrent investigation of the officer for a violation of the criminal laws. In such event, the 45-day time limit will commence on the day after the disposition of the criminal investigation.
6. The requirement that the disciplinary hearing take place within 10 to 30 days from the service of the Complaint underscores the statutory intent that disciplinary matters be resolved expeditiously.

In MacKenzie v. Regional Principals Ass'n, ___ N.J. Super. ___ (Chan. Div. 2004), Judge Klein of the Essex County Superior Court held that Article 1, Paragraph 19 of the New Jersey Constitution entitled officers of the Lay Faculty Association, Local 305 to receive actuarial valuations and audited financial statements concerning their pension plan. The Association represents lay teachers employed in the Regional Secondary Schools of the Archdiocese of Newark. The Court reasoned that the constitutional right to organize includes a right to receive the information necessary to exercise intelligently the right to bargain collectively.

REA:aat