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December 12, 2013

MEMORANDUM

TO: Commissioners
FROM: Counsel Staff
SUBJECT: Report on Developments in the Counsel's Office Since November 15, 2013

Appellate Division Appeals

The Burlington County Prosecutor has appealed Burlington County Prosecutor's Office and PBA Local 320, P.E.R.C. No. 2014-22, 40 NJPER __ (¶__ 2013).

Other Court Cases

Interest Arbitration - - Definition of "base salary"

Paterson Police PBA Local 1 v. City of Paterson, __ N.J. Super. __, 2013 N.J. Super. LEXIS 173

The Appellate Division of the Superior Court, in a precedential decision, overturns a trial court ruling holding that "base salary," for purposes of applying the 1.5% assessment for employee health insurance costs, meant base contractual salary and excluded additional items of compensation such as longevity, educational incentives, and detective differentials. The appeals court, guided by the text of N.J.S.A. 34:13A-16.7, and guidelines issued by administrative agencies rules that base salary should also include additional items of compensation such as educational incentives, detective and night differentials, and longevity pay.

As part of an interest arbitration award, a deduction of 1.5% of base salary (as mandated by P.L. 2010, c. 105) was to be assessed on all employees to defray the costs of health insurance benefits. The award was not appealed to the Commission.¹ The City began deducting 1.5 per cent of “pensionable salary.” The PBA contended that “base salary” meant base contractual salary and should not include additional items of compensation such as longevity, educational incentives, and night and detective differentials. The trial judge agreed with plaintiffs and entered judgment in their favor, excluding from ‘base salary’ those benefits. The City appealed. The appeals court, noting that the award was issued after amendments to the interest arbitration law took effect used its text, specifically N.J.S.A. 34:13A-16.7 as a guide to defining “base salary.” That statute reads:

“Base salary” means the salary provided pursuant to a salary guide or table and any amount provided pursuant to a salary increment, including any amount provided for longevity or length of service. It also shall include any other item agreed to by the parties, or any other item that was included in the base salary as understood by the parties in the prior contract. Base salary shall not include non-salary economic issues, pension and health and medical insurance costs.

Non-salary economic issues” means any economic issue that is not included in the definition of base salary.

The Court also considered guidelines issued by the Division of Local Government Services and the Division of Pension and Benefits.

¹ The Court observes that when the dispute arose, the parties were not required to present the issue to the Commission as neither sought a modification of the award, but rather clarification of the term “base salary.”