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November 15, 2012

MEMORANDUM

TO: Commissioners
FROM: Counsel Staff
SUBJECT: Report on Developments in the Counsel's Office Since October 25, 2012

Commission Cases

State of New Jersey Judiciary and Probation Association of New Jersey, P.E.R.C. No. 2011-38, 36 NJPER 417 (¶161 2010), aff'd 2012 N.J. Super. Unpub. LEXIS 2366

The Appellate Division of the Superior Court has affirmed the Commission's scope of negotiations decision restraining arbitration. The grievance alleged that the employer violated the parties' collective negotiations agreement and the "Compensation Plan for Judiciary Employees in the Case Professional Unit" by failing to fill vacancies in the Master Probation Officer title. The Commission held that the employer has a managerial prerogative to determine staffing levels and any enforcement of the Compensation Plan must be sought in another forum.

The Court, applying a deferential standard of review recognizing the Commission's expertise, concurs that the grievance primarily challenges the Judiciary's non-negotiable staffing decisions

New Appeal

The employer has appealed the Commission's decision in Morris County and Morris County Sheriff, P.E.R.C. No. 2013-27 affirming a supplemental interest arbitration award.

Appeal Withdrawn

The appeal in Cumberland County Prosecutor, P.E.R.C. No. 2012-66, a case ruling on an interest arbitration award and related scope of negotiations issues, is being withdrawn.

Other Cases

Cap on school superintendents compensation; agency flexibility in adopting regulations

New Jersey Association of School Administrators, et al. v. Christopher D. Cerf, et al. and Robert H. Holster v. Christopher D. Cerf, et al., ___ N.J. Super. ____, 2012 N.J. Super. LEXIS 170 (App. Div.)

The Appellate Division of the Superior Court, ruling on two consolidated appeals filed by the School Administrators Association and three School Superintendents, upholds the validity of regulations that tie the maximum compensation of School Superintendents to pupil enrollment. In so doing, the Court recognizes that an administrative agency possesses considerable discretion and flexibility in adopting administrative regulations. It observes:

- Administrative action that promotes or advances the policies and findings that served as a driving force for the enactment of legislation it implements is upheld.
- Courts give great deference to the agency's interpretation of statutes within its scope of authority.
- When considering a claim that a regulation exceeds delegated authority, a court may look beyond the specific terms of the enabling act to the statutory policy sought to be achieved by examining the entire statute in light of its surroundings and objectives.

Action to remove tenure; ability of administrative agency to consider constitutional claims.

David L. Hawk v. New Jersey Institute of Technology, et al. ___ N.J. Super. ____, 2012 N.J. Super. LEXIS 172

NJIT conducted an investigation and commenced a hearing to remove tenure from a full professor who also served as the Dean of NJIT's school of management during a two-year period during which he allegedly committed ethics violations (changing student's grades given by other faculty, insisting on the hiring of a faculty member with whom he had an undisclosed personal relationship and obtained reimbursement for unauthorized expenses). The Appellate Division of the Superior Court holds that Hawk's constitutional and due process claims could be considered in the hearing conducted by NJIT. It equates NJIT with an administrative agency and holds that Hawk can appeal any adverse determinations to the Appellate Division of Superior Court.

CEPA: where job requires reporting of infractions, doing so not covered by CEPA

David J. Tayoun v. Timothy Mooney, et al., 2012 N.J. Super. Unpub. LEXIS 2422

The Appellate Division of the Superior Court dismisses a CEPA and Civil rights lawsuit filed by the head of an Atlantic City Department which included an office responsible for code enforcement. The Court holds that where a supervisor's normal job duties involve reporting improper conduct by subordinates and, in the absence of reporting alleged criminal conduct to law enforcement authorities, a supervisor is not engaging in conduct protected by CEPA.

City can't temporarily furlough officials where statutes bar reduction in their pay

In the Matter of Luis Pastoriza, Camden, 2012 N.J. Super. Unpub. LEXIS 2430

The Appellate Division of the Superior Court reverses a determination of the Civil Service Commission and holds that the City Clerk, and other City of Camden officials who are covered by statutes prohibiting reductions in their compensation, cannot have their salaries reduced under a temporary layoff plan.

Failure to submit medical documentation made employee ineligible for donated leave

Kelly Queen v. City of Bridgeton, et al., 2012 N.J. Super. Unpub. LEXIS 2425

The Appellate Division of the Superior Court affirms the dismissal of a police dispatcher's lawsuit alleging that the City improperly refused to allow her to receive additional sick leave pursuant to a donated sick leave program. The City and the union representing the dispatcher had settled a grievance filed on her behalf allowing her to submit additional medical documentation to substantiate her eligibility for donated sick leave. The dispatcher did not do so.