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March 21, 2012

MEMORANDUM

TO: Commissioners
FROM: Counsel Staff
SUBJECT: Report on Developments in the Counsel's Office Since February 22, 2012

Commission Cases

Franklin Tp. and Franklin Tp. PBA Local No. 154 and Superior Officers Association, ___ N.J. Super. ___ (App. Div.), 2012 N.J. Super. LEXIS 32 affirming P.E.R.C. No. 2011-48, 36 NJPER 461 (¶179 2010), and P.E.R.C. No. 2011-59, 37 NJPER 16 (¶6 2011).

In a published decision, the Superior Court, Appellate Division affirms the Commission's rulings on two scope of negotiations petitions filed by Franklin Township. The Township asserted that a change for a four-on, four-off work schedule to a four-on, two-off schedule for police and superior officers was not mandatorily negotiable. The Court agreed with the Commission that the proposed work schedule changes were mandatorily negotiable, could be submitted to an interest arbitrator for inclusion in successor agreements and could not be unilaterally imposed.

An appeal was filed by the public employer from the Commission's decision in North Hunterdon-Voorhees Regional High School Board of Education, P.E.R.C. No. 2012-036. The Commission allowed arbitration of a grievance asserting the Board was misapplying the 1.5% law by assessing employees additional amounts, even though they were already paying more than 1.5 per cent for dependent health care coverage.

Other Cases

Discipline

In the Matter of Robert Cusick, Middlesex County Department of Adult Corrections 2012 N.J. Super. Unpub. LEXIS 442

The Superior Court, Appellate decision upholds the decisions of an administrative law judge and the Civil Service Commission to impose a 45-day suspension and a demotion to Sergeant on a Corrections Officer holding the rank of Lieutenant. The officer had been observed sleeping while on duty in the master control room of a corrections facility. The employer initially sought termination, but reduced the penalty to a 45 day suspension and a two-step demotion. The ALJ and the CSC held that the officer's previously unblemished 20 plus year service record warranted a further reduction in the penalty. The court rejects the officer's appeal.

Laquan Hudson v. New Jersey Transit Police Department 2012 N.J. Super. Unpub. LEXIS 449

The Superior Court, Appellate Division reverses, for the second time, a decision issued, following a hearing before an Administrative Law Judge, by the New Jersey Transit Police Department terminating an officer for alleged drug and alcohol use. The Court holds that the New Jersey Transit Police Department and/or its Chief of Police is an "agency head" within the meaning of the Administrative Procedure Act. However the Court holds that the Chief of Police was biased against the terminated officer based on a previous incident and should not have issued the final decision. The Court remands the case to have the NJTPD designate someone else to review the ALJ's decision.

Reinstatement: extent of back pay obligation

Linden Board of Education v. Linden Education Association, et al. 2012 N.J. Super. Unpub. LEXIS 416

In 2006, an arbitrator reduced the termination of a custodian to a 10-day suspension. The Board contested the award. The Superior Court Appellate Division held that the arbitrator lacked authority to terminate the custodian but the Supreme Court reversed and upheld the arbitration award. See Linden Bd. of Educ. v. Linden Educ. Ass'n ex rel. Mizichko, 202 N.J. 268 (2010). The Association successfully sought back pay for the custodian from the date of his initial suspension until he was reinstated in 2008. The Board, appealing a trial court order, argued that it was only liable for back pay through the end of the 2006-2007 school year because the custodian did not have a right to have his contract renewed. In this decision, the Superior Court Appellate Division upholds the full back pay order finding that the Board did not properly raise the "right to non-renew" defense.

Statute of limitations: FLSA and wage and hour claims by public employees

Guenzel v. Mount Olive Bd. of Educ., 2012 U.S. Dist. LEXIS 21583

After the plaintiff resigned her job as a part-time occupational therapist with the Mount Olive Board of Education she filed claims under the Fair Labor Standards Act and the New Jersey Wage and Hour Law seeking overtime compensation she was allegedly due. In an earlier ruling the United States District Court for the District of New Jersey held that FLSA claims pre-dating the two-year statute of limitations should be dismissed, allowing only pursuit of claims for compensation that allegedly should have been paid within two years of the date her lawsuit was filed. However the Court failed to make a similar ruling regarding the timeliness of the state wage and hour claims based on a misreading of the Board's arguments. In this opinion the federal court holds that the timeliness analysis for FLSA claims also applies to claims made under the wage and hour law. The Court holds that each time the public employer fails to pay proper compensation gives rise to a new cause of action. It rejects the argument that the failure to compensate plaintiff properly is a "continuing violation" allowing recovery back to the date of the first time the Board allegedly violated the applicable laws.