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February 28, 2013

MEMORANDUM

TO: Commissioners
FROM: Counsel Staff
SUBJECT: Supplemental Report on Developments in the Counsel's Office February 20, 2013

Commission Cases

APPELLATE DIVISION DECIDES KEYPORT, BELMAR AND MT. LAUREL FURLOUGH DECISIONS

In three cases decided in 2010, the Commission held that the unilateral imposition of furlough days, although approved by the Civil Service Commission, were mandatorily negotiable. The Commission upheld challenges to those actions, and with regard to the removal of health benefits from three Keyport employees reduced from full time to part-time, that the challenge to that reduction be deferred to binding grievance arbitration.

The three public employers appealed. On February 26, 2013, the Appellate Division of the Superior Court issued an unpublished, and therefore non-precedential, decision (copy attached) reversing the Commission's determination that the workday reductions and the imposition of furloughs were not mandatorily negotiable. The court upheld the Commission's ruling that the change in health benefits was mandatorily negotiable and could be submitted to binding grievance arbitration for resolution.

The Appellate Division reasoned that there were no unfair practices committed in the imposition of furlough days, because under the tests enunciated in In re Local 195, IFPTE, 88 N.J. 393, 404-405, the subject of furloughs were not negotiable both because that subject was, at the time the furloughs were imposed, subject to preemption by N.J.A.C. 4A:8-1.1A, an emergency regulation of the Civil Service Commission (later repealed), and also because “the decision to furlough and demote employees were non-negotiable policy determinations.” In this regard the court cited both Kearny PBA Local No. 21 v. Town of Kearny, 81 N.J. 208, 215 (1979) and “Morris Cty. Sheriff’s Office v. Morris Cty. Policemen’s Benevolent Ass’n, Local 298, 418 N.J. Super. 64, 75-76 (App. Div. 2011) for the proposition that “When the dominant concern is the government’s managerial prerogative to determine policy, a subject may not be included in collective negotiations even though it may intimately affect employees’ working conditions.”

The Appellate Division did agree with the Commission that the health benefits issue in the Keyport case should be permitted to proceed to arbitration, since that issue involved an interpretation of the parties collectively negotiated agreement.