



**STATE OF NEW JERSEY
PUBLIC EMPLOYMENT RELATIONS COMMISSION**

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October 22, 2008

MEMORANDUM

TO: Commissioners

FROM: Ira W. Mintz
General Counsel

SUBJECT: Monthly Report on Developments in the Counsel's Office Since September 24, 2008

Commission Cases

On October 6, 2008, the Harrison Board of Education moved to file an interlocutory appeal of an interim relief decision issued by a Commission designee, I.R. 2009-6. The designee issued an order restraining the Board from extending the teacher workday. The Commission filed a letter brief opposing the Board's motion and arguing that no grave damage or injustice will occur if the Commission's proceedings are permitted to continue uninterrupted and if the parties are left to resolve their dispute over an increase in the teacher workday through their current round of contract negotiations.

On October 10, 2008, Judge Clarkson S. Fisher, Jr. of the Appellate Division denied the Township of Rockaway's Application For Emergent Relief seeking an stay of a grievance arbitration hearing scheduled for October 22. The scope of negotiations decision declining to restrain binding arbitration is the subject of an appeal before the Appellate Division and is currently on temporary remand to the Commission to consider the introduction of additional evidence.

The New Jersey Supreme Court has denied a petition for certification filed by PBA Local 105. The PBA was seeking to challenge a decision of the Appellate Division that affirmed the Commission's decision in State of New Jersey, P.E.R.C. No. 2007-60, 33 NJPER 116 (¶21 2007). In that decision, the Commission restrained binding arbitration of a grievance seeking compensatory time off for essential employees who were required to work during the July 2006 State shutdown. The Commission restrained arbitration because Department of Personnel regulations limit the compensation for essential workers to regular pay.

Teamsters Local 97 has filed a petition for certification with the New Jersey Supreme Court challenging a decision of the Appellate Division that reversed the Commission's decision in Township of Toms River, P.E.R.C. No. 2007-56, 33 NJPER 108 (¶37 2007). The Commission had denied a restraint of binding arbitration of a grievance alleging that the Township violated the parties' collective negotiations agreement when it deprived unit employees of overtime opportunities by allowing a subcontractor's workers to remove trees outside of regular work hours. The Appellate Division reversed finding the Saturday overtime work to be an incidental feature of the subcontract and thus did not accept what it characterized as the Commission's "implicit conclusion that the Township entered into the private contract in bad faith to avoid excess labor costs." The Court found no predominant purpose to avoid excess labor costs and therefore found the grievance to be non-arbitrable.

Other Cases

In In re Kenneth R. Martinez, __ N.J. Super. __ (App. Div. 2008) (9/30/08), the Appellate Division reversed the portion of a Merit System Board decision that accepted a portion of a settlement agreement that had promised an employee a promotion if he scored first on a promotional exam. The Court stated that it had serious doubts that the Legislature wished to allow municipalities to dispense with the Rule of Three and reach agreements with applicants guaranteeing them a position if they scored high enough on an exam. Such individualized guarantees run contrary to the objectives of the civil service system.

In City of Ocean City v. Somerville, et al., __ N.J. Super. __ (App. Div. 2008) (10/10/08), the Court held that an ordinance that imposes a "cost of living" cap on budgeted municipal expenditures in a Faulkner Act community may not be adopted by the "initiative" process.

In re Mark Moncho, App. Div. Dkt. No. A-0130-07T2 (10/16/08), the Appellate Division reversed a final decision of the Division of State Police that a sergeant violated none of the specifications underlying the disciplinary charges; but nonetheless, was guilty of the first disciplinary charge based solely upon the amount of overtime he had earned. At no time was the sergeant ever notified that the accrual of overtime, in and of itself, could subject him to disciplinary action. An employee cannot legally be tried or found guilty on charges of which he has not been given plain notice by the appointing authority.

Legislation

P.L. 2008, c. 89 prohibits pension system credit purchased for out-of-State service from being creditable towards post-retirement health care benefits.

The law also provides that the State, or an independent State authority, commission, board or instrumentality, may allow any employee who is eligible for other health care coverage that is not under the SHBP to waive the SHBP coverage. In consideration of filing a waiver, the State or other employer may pay the employee annually an amount established at its sole discretion and not in excess of 50% of the amount saved because of the employee's waiver of coverage.

The law also raises the retirement age for a benefit without any reduction, from age 60 to age 62, for new members of TPAF and PERS.

The law also raises to \$7500 the eligibility criteria for becoming a member of TPAF and PERS. Currently, the eligibility criteria are a minimum annual compensation of \$500 for TPAF and \$1,500 for PERS. The \$7,500 minimum will be adjusted annually by the Director of the Division of Pensions and Benefits, by regulation, in accordance with changes in the Consumer Price Index but by no more than 4 percent.

The law provides that an adjunct faculty member or part-time instructor at a public institution of higher education in the State whose employment agreement begins after that effective date will be eligible for membership in the Alternate Benefit Program (ABP), instead of PERS.

The law puts into statute the current eligibility criteria for SHBP coverage, now contained in regulation, for an employee of an employer other than the State, who must work the number of hours per week as prescribed by the governing body of the participating employer, which number of hours worked will be considered full-time, determined by resolution and not less than 20.

Finally, the law lowers, from 13 to 12, the number of paid holidays for all State government public employees. Lincoln's Birthday will no longer be considered a public holiday for the purposes of conducting State government business. This provision will not impair any collective bargaining agreement in effect on the effective date and will take effect in the calendar year after the collective bargaining agreements or contracts covering a majority of the Executive Branch employees expire. Those contracts expire on June 30, 2011.