



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

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November 17, 2009

MEMORANDUM

TO: Commissioners

FROM: Ira W. Mintz
General Counsel

SUBJECT: Monthly Report on Developments in the Counsel's Office Since October 29, 2009

Commission Cases

_____ The Appellate Division of the Superior Court has denied a request of the State of New Jersey to file an emergent motion for a stay of P.E.R.C. No. 2010-13, 35 NJPER 335 (¶114 2009). In that decision, the Commission adopted, with modifications, a Hearing Officer's report and recommended decision arising out of a representation petition filed by the New Jersey State Troopers Captain's Association seeking to represent a collective negotiations unit of State police captains employed by the State of New Jersey (Division of State Police). The Court stated that counsel may file a motion in the ordinary course.

The City of Camden and Camden County Council No. 10 have filed appeals of P.E.R.C. No. 2010-18, 35 NJPER 353 (¶119 2009). In that decision, the Commission addressed whether N.J.S.A. 52:27BBB-1 (Municipal Rehabilitation and Economic Recovery Act "MRERA") preempts negotiations in a scope of negotiations proceeding filed by the City for a restraint of binding arbitration of a grievance filed by Council No. 10. The grievance contests layoff procedures. The Commission held that the answer to whether the New Jersey Employer-Employee Relations Act, N.J.S.A. 34:13A-1 et seq., is preempted by MRERA and thus preempts negotiations over layoff procedures is intertwined with a related question pending before the Superior Court and granted the City's request for a restraint of binding arbitration. The Commission also granted Council No. 10's motion for summary judgment in a related unfair practice proceeding. The charge challenges the City's refusal to supply information in

connection with a layoff. The Commission held that nothing in MRERA absolves the City from complying with the duty of an employer to supply information. The Commission also granted the City's cross-motion for summary judgment on the aspect of the unfair practice charge that alleged a duty to negotiate over layoff procedures.

The Borough of Fort Lee has filed an appeal of P.E.R.C. No. 2010-17, 35 NJPER 352 (¶188 2009). In that decision, the Commission affirmed an interest arbitration award on remand. The Commission had remanded the initial award to the arbitrator to address comparability to private and public sector employees in general, as well as the \$1 million the arbitrator projected in savings to the Borough from his award of a new salary schedule given the Borough's hiring freeze. The Arbitrator issued a supplemental award finding no basis to modify the terms of his initial award and the Borough appealed. The Commission held that in his second decision, the arbitrator provided a reasoned analysis and affirmed the award.

Other Cases

In In the Matter of Stephanie M. Carter-Green, Dept. of Corrections, App. Div. Dkt. No. A-1201-08T3 (11/4/09), in the course of sustaining a disciplinary determination of the Civil Service Commission, the Appellate Division upheld the State's right to adopt a policy of zero tolerance for discrimination or harassment that affords broader protection to its employees than would be afforded in the private sphere under Lehmann v. Toys R Us, Inc., 132 N.J. 587 (1993).

In CWA v. Board of Trustees of PERS, App. Div. Dkt. No. A-3807-07T1 (11/9/09), the Appellate Division held that although PERS is not required to engage in the APA's rule-making process when setting the contribution rate for members of the Prosecutors Part, and the appellants are not entitled to a "contested case" hearing under the APA to challenge the Board's rate-setting determination, the appellants should be afforded prior notice and an opportunity to comment on any proposed change in the rate.