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March 18, 2010

MEMORANDUM

TO: Commissioners

FROM: Ira W. Mintz
General Counsel

SUBJECT: Report on Developments in the Counsel's Office Since February 25, 2010

Commission Cases

The Morris County Sheriff's Office and County of Morris have filed an appeal of P.E.R.C. No. 2010-16, __ NJPER __ (¶__ 2010). In that decision, the Commission granted, in part, Morris County Policemen's Benevolent Association, Local 298's cross-motion for summary judgment on an unfair practice charge. The charge alleged that the employer violated the New Jersey Employer-Employee Relations Act, N.J.S.A. 34:13A-1 et seq., when it issued a directive providing that staff who are assigned to positions normally closed on weekends will no longer be permitted to work those positions on a holiday. The Commission held that because the employer announced the change during the pendency of interest arbitration proceedings, it violated the Act.

The Appellate Division has reversed and remanded the Commission's decision in County of Burlington, P.E.R.C. No. 2009-10, 34 NJPER 247 (¶85 2008), rev'd and rem'd __ N.J. Super. __ (App. Div. 2010), App. Div. Dkt. No. A-1394-08T1 (3/11/10) (attached). In that decision, the Commission held that under Warren Cty., P.E.R.C. No. 86-111, 12 NJPER 357 (¶46 1986), given their statutory power to arrest, weights and measures employees are police within the meaning of the Act. Accordingly, the Commission held that the Director of Representation properly directed an election to sever weights and measures employees from an existing non-law enforcement unit represented by the CWA. The Appellate Division held that the Commission's per se rule that employees who have even a limited authority to arrest for regulatory violations reaches persons the Legislature had not intended to include within the statutory definition of

“policeman.” The Court remanded the matter to the Commission to address the petition anew without reliance on the per se rule.

The Appellate Division has affirmed the Commission’s decision in Borough of East Rutherford, P.E.R.C. No. 2009-15, 34 NJPER 289 (¶103 2008), aff’d ___ NJPER ___ (¶___ App. Div. 2010), App. Div. Dkt. No. A-1260-08T2 (3/4/10) (attached). In that decision, the Commission declined to restrain binding arbitration of a grievance filed by East Rutherford P.B.A. Local 275. The grievance challenges increases in co-payments for NJPLUS and HMO office visits under the State Health Benefits Program and seeks reimbursement of additional co-pay costs and a return to negotiated co-pay levels. The Commission held that the level of health benefits is generally negotiable and declined to restrain arbitration over the reimbursement issue, but permitted the Borough to refile its petition should the arbitrator find a contractual violation and a dispute arise over the negotiability of any remedy issued. The Court affirmed emphasizing that the Borough had a right to refile its petition post-award.

NJIT has withdrawn its appeal of N.J.I.T. and FOP Lodge No. 93, P.E.R.C. No. 2010-48, 35 NJPER 474 (¶158 2009), App. Div. Dkt. No. A-1938-09T1. In that decision, the Commission granted, in part, NJIT’s request for a restraint of binding arbitration of a grievance filed by FOP Lodge 93. The grievance challenged the termination of a police officer.

The CWA has withdrawn its appeal of New Jersey Administrative Office of the Courts (Judiciary), P.E.R.C. No. 2010-1, 35 NJPER 268 (¶94 2009), App. Div. Dkt. No. A-0062-09T1. In that decision, the Commission dismissed CWA’s unfair practice charge that alleged that the AOC violated the Act when it unilaterally implemented a program requiring freelance interpreters (“FLIs”) to sign professional service agreements (“PSAs”) that eliminated their ability to become members of the collective negotiations unit currently representing FLIs that work more than 288 hours. The Commission found that FLIs who signed PSAs are independent contractors and therefore not public employees covered by the Act.

Other Cases

In New Jersey Education Association v. State of New Jersey, ___ N.J.Super. ___ (App. Div. 2010), the Appellate Division held that Teachers' Pension and Annuity Fund (TPAF) members, although entitled by law to the receipt of vested benefits upon retirement, possess no constitutionally-protected contract right to the particular level, manner or method of State funding provided in the statute.