



STATE OF NEW JERSEY
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October 20, 2010

MEMORANDUM

TO: Commissioners

FROM: Ira W. Mintz
General Counsel

SUBJECT: Report on Developments in the Counsel's Office Since September 23, 2010

Commission Cases

The City of Asbury Park has withdrawn its appeal from P.E.R.C. No. 2011-17, ___ NJPER ___ (¶__ 2011). In that decision, the Commission affirmed an interest arbitration award involving the City and PBA Local 6 and PBA Local 6, Superior Officers Association.

The Borough of Keyport has appealed from P.E.R.C. No. 2011-20, ___ NJPER ___ (¶__ 2010). In that decision, the Commission denied the Borough of Keyport's petition for a restraint of binding arbitration of a grievance filed by the International Union of Operating Engineers, Local 68 and granted Local 68's motion for summary judgment in a related unfair practice case. The Commission held that the reduction of work hours in this Civil Service jurisdiction was mandatorily negotiable. The Commission distinguished State of New Jersey (DEP), P.E.R.C. No. 95-115, 21 NJPER 267 (¶26172 1995), aff'd 285 N.J. Super. 541 (App. Div. 1995), cert. den. 143 N.J. 519 (1996), finding the holding in that case applied only to State employees. The Commission further found that the Borough violated N.J.S.A. 34:13A-5.4a(1) and (5) when it unilaterally reduced the work hours of three employees.

The Township of Parsippany-Troy Hills has appealed from P.E.R.C. No. 2011-18, ___ NJPER ___ (¶__ 2010). In that decision, the Commission determined the negotiability of the subject of an unfair practice charge filed by Parsippany Public Employees Local 1. The charge alleged that the Township violated the New Jersey Employer-Employee Relations Act, N.J.S.A.

34:13A-5.4a(1), when it required an employee to complete a Family Medical Leave Act medical certification form when the employee wanted to use paid leave rather than take FMLA leave. The Commission held that where the parties have not reached an agreement requiring the use of paid leave concurrently with FMLA leave and where an employee has declined to take FMLA leave, the employer has neither a managerial prerogative nor a preemptive right to require employees to complete the form.