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June 22, 2011

MEMORANDUM

TO: Commissioners

FROM: Counsel Staff

SUBJECT: Report on Developments in the Counsel's Office Since May 26, 2011

Commission Cases

In Bergen Community College, and Public Employment Relations Commission and Bergen Community College Support Staff Association, Docket No. MER-L-597-11, (6/9/2011), Mercer County Superior Court Judge Thomas W. Sumners Jr., issued an Order refusing to quash a subpoena issued by a Commission Hearing Examiner in a pending unfair practice case, Docket No. CO-2009-272. After an Order to Show Cause hearing, Judge Sumners directed the College to turn over the subpoenaed documents, which it claimed were confidential, to him for an in camera review. Following the review, the Court ordered that the documents be turned over to the Association's attorney for use in the unfair practice proceeding. The Counsel's office filed a brief seeking dismissal of the College's application and argued orally before Judge Sumners.

We have received appeals of these decisions:

Union City and PBA Local 8, P.E.R.C. No. 2011-073 (allowing arbitration of grievance challenging change in Rx co-pays);

Atlantic County and FOP Lodge 34, P.E.R.C. No. 2011-076 (appealing portion of interest arbitration award concerning shift differential and holiday pay)

Hunterdon County and FOP Lodge 94, P.E.R.C. No. 2011-075 (appealing portion of interest arbitration award concerning increments and salary increase)

Cases Related to Commission Cases

In IAFF Local 2081 and Sarapuchiello, P.E.R.C. No. 2009-47, 35 NJPER 66 (¶25 2009), the Commission affirmed the refusal of the Director of Unfair Practices to issue a complaint based on a charge filed by a retired Hackensack firefighter. The firefighter asserted that the IAFF breached its duty of fair representation when it refused to file a grievance asserting that the City of Hackensack failed to provide him and his dependents with health insurance coverage in accordance with the terms of a contract between the City and the IAFF when Sarapuchiello retired. The Director and the Commission ruled that retired employees cannot file unfair practice charges. The Commission's decision noted that an action to enforce the contractual rights of a retired employee could be pursued in other forums. Following the Commission's ruling, Sarapuchiello filed a lawsuit against the City seeking the benefits and obtained partial summary judgment from a Superior Court Judge who ordered that the City reinstate the coverage. The City appealed and has obtained a ruling from the Appellate Division overturning the Judge's ruling on the grounds that there was insufficient evidence in the record to support the lower court's ruling. Sarapuchiello v. City of Hackensack, 2011 N.J. Super. Unpub. LEXIS 1424 (6/3/2011). The case is remanded to the lower court to allow the submission of additional relevant evidence.

A shorter version of one of two decisions issued by Mercer County Superior Court Judge Linda Feinberg on January 19, 2011, involving a multi-faceted challenge by the major state unions to the validity of P.L. 2010, c. 2, was approved for publication by the Committee On Opinions on June 9, 2011. That means the decision is considered precedential. The case, Communications Workers of America v. State of New Jersey, Department of Treasury, Division of Pensions and Benefits and the State Health Benefits Commission 2011 N.J. Super. LEXIS 104 N.J. Super. _____ (Law Div. 2011), was discussed in the February 3, 2011 Counsel Report and in the annual report of judicial developments distributed to attendees of the Commission's annual conference.

Other Cases

Millar v. Pitman Bd. of Educ., 2011 U.S. Dist. LEXIS 63962 (D.N.J. 6/13/2011) The federal district court dismisses the claim of a non-renewed, part-time, elementary school teacher, that she detrimentally relied on a promise of full-time employment after a year as a part-time teacher, made by a teacher and the principal (husband and wife, respectively) of a Pitman elementary school. The teacher, whose contract was not renewed by the Board of Education after her year as a part-time teacher, was allegedly told by the couple (who were not named in the lawsuit) that she would receive full-time employment as an elementary school teacher after working her first year on a part-time basis. The plaintiff, who had previous teaching experience, was, before taking the part-time post, enrolled in a program to obtain certification as a registered nurse and alleged that the couple's representations caused her to abandon her course of study. The Court holds, applying the doctrine of principal and agent, that even if the couple made the representations, the plaintiff should have

known they were beyond the lawful authority of an elementary school teacher and principal. The Court notes that, because there are no allegations that any members of the Board made representations to the plaintiff, it did not have to consider whether this was a case where the doctrine of promissory estoppel could be invoked against a public employer.