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June 29, 2011

MEMORANDUM

TO: Commissioners

FROM: Counsel's Office

SUBJECT: Supplemental Report on Developments in the Counsel's Office Since June 22, 2011

Commission Cases

The Appellate Division, in an unpublished opinion, has affirmed Flemington-Raritan Bd. of Ed. and Flemington-Raritan Ed. Ass'n, P.E.R.C. No. 2011-28, 36 NJPER 363 (¶141 2010), aff'd 2011 N.J. Super. Unpub. LEXIS , 37 NJPER (¶ 6/27/11) (attached). The Board had eliminated some work previously performed during the summer, shifted other summer work to the ten-month school year without additional compensation, and gave other summer tasks, normally performed by computer teachers, to non-unit employees (administrators and paid student interns). The Commission had restrained arbitration of the elimination of one type of summer work, but allowed arbitration over the Association's claim for compensation for additional school year work load and the reassignment of summer work of computer teachers to administrators and paid students. The Board appealed only from the Commission's order that the Association could arbitrate the portion of the grievance asserting that the Board violated the contract when it gave work normally performed by computer teachers during the summer to administrators and paid student interns. The Court, noting that the Board did not request a hearing, holds that it improperly made arguments on appeal, concerning exceptions to the unit work rule, that it did not argue to the Commission. The Court further recognizes that the issues before the Commission were limited to determining whether the dispute framed by the grievance is mandatorily negotiable, not whether the grievance has merit.

Other Cases

County of Passaic v. Policemen's Benevolent Association Local 286, 2011 N.J. Super. Unpub. LEXIS (6/29/11), affirms a trial court decision vacating an a grievance arbitration award. The arbitrator held that the employer violated an established past practice when it eliminated a 5 per cent stipend for Detectives to be paid in lieu of overtime. Both courts held that the past practice could not be enforced because there was specific language in the collective negotiations agreement covering differentials and overtime payments.

Faunce et al.v City of Atlantic City, 2011 N.J. Super. Unpub. LEXIS 1629 (6/23/11) affirms a trial court dismissal of disciplinary charges brought against three civil service firefighters (two captains and a watch commander) stemming from an incident where unauthorized female visitors were allowed into a fire house at night. The charges against the superior officers generally alleged that they failed to properly supervise their subordinates and insure the security of the fire station. The trial court ruled that the charges should be dismissed because the City did not comply with requests for discovery made by representatives of the firefighters and insisted that the firefighters discuss the incidents at "investigatory interviews," even though civil service rules barred employees accused of discipline from being compelled to testify. The Appellate Division affirms the dismissal of the charges for the reasons articulated by the trial court.