

NOT FOR PUBLICATION WITHOUT THE  
APPROVAL OF THE APPELLATE DIVISION

SUPERIOR COURT OF NEW JERSEY  
APPELLATE DIVISION

DOCKET NO. A-3626-08T2  
A-3627-08T2  
A-3656-08T2  
A-3657-08T2

IN THE MATTER OF EMERGENCY  
TEMPORARY LAYOFF RULE.

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THE COMMUNICATIONS WORKERS OF  
AMERICA, AFL-CIO, COUNCIL 73  
OF THE AMERICAN FEDERATION OF  
STATE, COUNTY AND MUNICIPAL  
EMPLOYEES, AFL-CIO, AND CAMDEN  
COUNTY COUNCIL 10,

Appellants,

v.

NEW JERSEY CIVIL SERVICE COMMISSION,

Respondent.

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PROBATION ASSOCIATION OF NEW JERSEY,  
a not for profit New Jersey  
Corporation,

Appellant,

v.

NEW JERSEY CIVIL SERVICE COMMISSION,

Respondent.

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NEW JERSEY STATE FIREMEN'S MUTUAL  
BENEVOLENT ASSOCIATION, a not for  
profit New Jersey Corporation,

Appellant,

v.

NEW JERSEY CIVIL SERVICE COMMISSION,

Respondent.

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Argued April 16, 2009 - Decided April 17, 2009

Before Judges Stern, Rodríguez and Payne.

On appeal from the Civil Service Commission.

Robert A. Fagella argued the cause for appellant New Jersey State Policemen's Benevolent Association in A-3626-08T2 (Zazzali, Fagella, Nowak, Kleinbaum & Freidman, attorneys; Mr. Fagella and Paul L. Kleinbaum, of counsel; Colin M. Lynch, Edward Suarez, Jr., and Mr. Kleinbaum, on the brief).

Steven P. Weissman argued the cause for appellants The Communication Workers of America, AFL-CIO, Council 73 of the American Federation of State, County and Municipal Employees, AFL-CIO, and Camden County Council 10 in A-3627-08T2 (Weissman & Mintz, LLC, and Spear Wilderman, P.C., attorneys; Mr. Weissman, Annmarie Pinarski, and James Katz, on the brief).

David I. Fox argued the cause for appellants Probation Association of New Jersey in A-3656-08T2 and New Jersey State Firemen's Mutual Benevolent Association in A-3657-08T2 (Fox and Fox LLP, attorneys; Mr. Fox, Nora R. Locke, and Lynsey A. Johnson, of counsel and on the brief).

Robert J. Gilson, Assistant Attorney General, argued the cause for respondent Civil Service Commission (Anne Milgram, Attorney General, attorney; Lewis A. Scheindlin, Assistant Attorney General, of counsel; Sally Ann Fields, Senior Deputy Attorney General, and Lisa Dorio Ruch and Todd A. Wigder, Deputy Attorneys General, on the brief).

Leonard C. Schiro argued the cause for amicus curiae Teamsters Local 97 and Office and Professional Employees International Union, Local 32 (Mets, Schiro & McGovern, LLP, attorneys; James M. Mets and Kevin P. McGovern, of counsel; Brian J. Manetta, on the briefs).

PER CURIAM

We accelerated the appeal challenging the promulgation of N.J.A.C. 4A:8-1.1A as an emergency regulation.

We find that the promulgation of the regulation on an emergency basis complied with the statutory requirements. See N.J.S.A. 52:14B-4(c). That statute gives the decision-making power relating to the existence of an "imminent peril" to the Civil Service Commission and the Governor. Given the economic crisis confronting the state and nation, and the fluid and rapidly unfolding circumstances in which we live, we find the statement of "imminent peril" to be sufficient. See N.J.S.A. 52:14B-4(c); N.J.A.C. 1:30-6.5.

The substantive validity of the regulation poses a different question. As to that, we conclude that enough has

been demonstrated to suggest that the procedure embodied in N.J.A.C. 4A:8-1.1A(a), to the extent it permits "a staggered layoff of each employee in a layoff unit for one or more work days over a defined period," may be inconsistent with the statutory requirements including N.J.S.A. 11A:8-1 and N.J.S.A. 34:13A-5.3 and -4, providing rights to employees and requiring mandatory negotiations relating to conditions of work. There has been a substantial showing before us that the emergent regulation may not adequately address layoff rights under statutes and regulations which have not been amended. See N.J.S.A. 11A:8-1; N.J.A.C. 4A:8-2.1 et seq.<sup>1</sup> Accordingly, we believe that the issues concerning "staggered layoffs" warrant stay of enforcement pending plenary consideration. We therefore stay the emergency regulation to the extent it relates to "staggered layoffs" pending consideration of the issues as to scope of negotiations before the Public Employment Relations Commission, which has initial jurisdiction to consider the question, and before which related proceedings have otherwise been commenced. See N.J.S.A. 34:13A-5.4(d); Ridgefield Park

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<sup>1</sup> The Commission argues that the sentence in N.J.A.C. 4A:8-1.1A(a) providing "A temporary layoff shall be considered a single layoff action even though the layoff of individual employees takes place on different days during the defined period" solves any legal concern. The issue must be considered by PERC.

Educ. Ass'n v. Ridgefield Park Bd. of Educ., 78 N.J. 144, 154 (1978); State v. State Supervisory Employees Ass'n, 78 N.J. 54, 83 (1978); City of Newark v. Newark Council 21, 320 N.J. Super. 8, 16-17 (App. Div. 1999).

On the other hand, a decision to lay off all employees in a layoff unit, even on a temporary basis, must be considered a managerial prerogative, and lawfully embodied in the emergent regulation. N.J.S.A. 11A:8-1; State v. Supervisory Employees Ass'n, supra, 78 N.J. at 88; State of New Jersey v. CWA, 285 N.J. Super. 541, 551-52 (App. Div. 1995), certif. denied, 143 N.J. 519 (1996). Such layoffs do not impact rights such as those involving displacement and seniority. We find no basis to disturb the emergency regulation providing for temporary layoffs of "an entire layoff unit for one or more work days over a defined period," subject to the provisions of N.J.A.C. 4A:8-1.1A(b) permitting exemption of units because of their relationship to the needs of public safety, law enforcement, child welfare and care for institutionalized persons.

The promulgation of the emergency regulation is affirmed except for the portions of N.J.A.C. 4A:8-1.1A(a) and (d) relating to "a staggered layoff." As to the issues concerning "staggered layoffs," the matter is transferred to PERC pursuant

to R. 1:13-3(b).<sup>2</sup> In the interim, the State and appointing authorities may proceed as embodied in N.J.A.C. 4A:8-1.1A as modified herein or under other regulations now provided. The Civil Service Commission may also proceed with the rulemaking process in the normal course.

I hereby certify that the foregoing  
is a true copy of the original on  
file in my office.



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<sup>2</sup> To the extent that the regulation raised issues under the Contract Clause or other constitutional issues, we defer consideration until after the PERC proceedings, which might focus the issue more appropriately.