

FURLOUGHS OF PUBLIC EMPLOYEES UPHeld BY NEW JERSEY COURT

The emergency adoption of a civil service rule authorizing New Jersey state and local governments to act immediately to implement mandatory unpaid furloughs for their employees complies with state law, a New Jersey state appeals court rules. But the appeals court gave the go-ahead for mandatory furloughs only when an entire layoff unit is furloughed on the same day. It temporarily bars the implementation of staggered furloughs, in which only part of the workforce is laid off on any given day.

Ruling on a legal challenge by New Jersey public employee unions to the validity of the state Civil Service Commission's action, the New Jersey superior court appellate division upholds the state's right to adopt the regulation on an emergency basis, without going through the usual rulemaking process. State law provides for emergency rulemaking if the governor and commission determine that an "imminent peril" exists. "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," the appeals court writes.

The court says a decision to lay off all employees in a unit, even temporarily, is a managerial prerogative "and lawfully embodied in the emergent regulation." But the appeals court defers to the New Jersey Public Employment Relations Commission (PERC) on the question of whether staggered furloughs are consistent with statutory requirements regarding employee rights and mandated negotiations relating to work conditions. The emergency rule "may not adequately address layoff rights under statutes and regulations which have not been amended."

Robert Master, legislative and political director for Communications Workers of America (CWA), says the ruling directly affects Governor Jon S. Corzine's (D) plan to require state employees to take one day off without pay in May and another in June to help balance this year's budget. Almost all of the involuntary layoff plans submitted to the Civil Service Commission by nearly every department and autonomous agency of the executive branch of state government rely on staggered furloughs, Master says. Only three of the 12 departments that employ CWA-represented workers will be entirely closed during one day in May and one day in June, according to one of the three unfair labor practice charges the union filed with the PERC over the temporary furlough issue.

CWA, which represents 65,000 New Jersey public employees and is among the unions that challenged the emergency rule in state court, argues in the PERC filings that the imposition of mandatory involuntary unpaid leave days violates the union's collective bargaining agreements. Unilaterally reducing annual rates of compensation and hours by requiring employees to take unpaid leave also violates the New Jersey Employer-Employee Relations Act, the CWA says in its unfair labor practice charges filed against the state, a borough, and a township. The union asks the PERC for emergency relief barring New Jersey's state and local governments from implementing their unpaid furlough plans pending the agency's decision on the unfair labor practice charges.

The decision is available at <http://op.bna.com/dlrcases.nsf/r?Open=ssaa-7ret7z>.

(Source: *Communications Workers of Am. v. N.J. Civil Service Comm'n*, N.J. Super. Ct. App. Div., No. A-3626-08T2, April 17, 2009, as reported in BNA, *Daily Labor Report*, No. 78, April 27, 2009, p. A6.)