



**STATE OF NEW JERSEY
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September 16, 2015

TO: Commissioners
FROM: Don Horowitz, Acting General Counsel
RE: Developments in the Counsel's Office Since August 4, 2015

NEW APPEALS/APPLICATIONS

The Robbinsville Education Association has filed a petition for certification seeking review of the decision of the Appellate Division of the Superior Court which is summarized below.

COURT DECISIONS RECEIVED

Commission Cases

Commission does not lack jurisdiction over all claims filed by union dissidents

Probation Association of New Jersey and Peter Tortoreto and Robyn Ghee, ___ N.J. Super. ___, 2015 N.J. Super. LEXIS 142

The Appellate Division of the Superior Court, in a published, thus precedential, decision overturns the Commission's decision [P.E.R.C. 2014-31] adopting a recommendation of a Hearing Examiner to grant summary judgment dismissing charges filed by two former union officials who were suspended by the Probation Association of New Jersey. The Court held that the Commission erroneously determined that it lacked jurisdiction to consider the claims of unfair practices filed by two probation officers as the charge, if true, may constitute unfair practices under N.J.S.A. 34:13A-5.4(b)(1) and not internal union disputes that were beyond the scope of the Commission's jurisdiction. The Court's decision does not hold that the rights of the charging party were violated. It finds that the allegations of the charges if true might constitute unfair practice and remands the case for a hearing.

Scope of Negotiations

State v. Div. of Crim. Justice Non-Commissioned Officers' Association et. al., 2015 N.J. Super. Unpub. LEXIS 2090

The Appellate Division of the Superior Court concurs with the Commission's ruling that proposals advance during collective negotiations by three unions represented law enforcement personnel of the Division of Criminal Justice are not mandatorily negotiable and may not be included in agreements between the State and the unions. After a 2010 legislative amendment that removed the formerly confidential status of the personnel represented by the Unions, they were certified by the Commission as exclusive negotiations representatives. In P.E.R.C. No. 2014-50, the Commission issued a ruling on the negotiability of proposals advanced by the unions that the State contended were non-negotiable. The Unions appealed the Commission's decision on eight issues. The State did not challenge the agency's determinations on issues held to be negotiable. The Court held that the Commission's final decisions were properly premised on facts in the record and are consonant with the applicable statutory provisions.

Furloughs to meet fiscal crisis

Robbinsville Tp. Bd. of Ed. v. Washington Tp. Ed. Ass'n., 2015 N.J. Super. Unpub. LEXIS 1909

The Appellate Division of the Superior Court affirms the Commission's decision [P.E.R.C. No. 2014-30] dismissing unfair practice charges filed by the Association after the Board eliminated three non-instructional "professional development days" from the school year and furloughed teaching staff on those dates. The Board's action was taken in response to reduced revenues from lowered state aid and funding from the Township. Before deciding on the furloughs the Board notified the Association and requested that it reopen negotiations on the current collective negotiations agreement. The Association refused. Applying the Supreme Court's recent decision in Borough of Keyport v. Int'l Union, ___ N.J. ___, 2015 N.J. LEXIS 790, the appeals court held that the Board's decision to meet a fiscal crisis by furloughing staff, here on non-instructional days, was non-negotiable. The court further held that a communique from the Superintendent to the teaching staff simply advised them of the Board's action and did not seek to undermine the Association or interfere with the Association-faculty relationship. The Association is seeking to have the state supreme court review the ruling.

Adjustment of school calendar to match schedule of receiving district

Bethlehem Tp. Bd. of Ed. and Bethlehem Tp. Ed. Ass'n., 2015 N.J. Super. Unpub. LEXIS 1944

The Appellate Division of the Superior Court affirms the Commission's decision [P.E.R.C. No. 2014-47] dismissing unfair practice charges filed by the Association after the Board changed the 2011-2012 school calendar to have teachers began their work year on August 24 and students on August 25. The Board operates a K-8 district and made the changes to conform its school

calendar with that of a regional high school where its pupils continue their education. The change was first considered by the Board a year prior to its implementation and was formally adopted in February prior to the start of the school year in late August. Input from parents and teaching staff was solicited, but the latter group did not respond. The court also noted that the Association did not argue that there were severable effects on employees caused by the calendar change and that the calendar change did not alter the length of the work year.

OTHER DECISIONS

Discharged Port Authority police officer may not file CEPA action in N.J.

Alpert v. Port Authority, 2015 N.J. Super. LEXIS 139

This decision, summarized in the June 2015 counsel report and originally issued as an unpublished opinion, has now been approved for publication and is thus precedential.

A Port Authority police officer filed a lawsuit alleging he was discharged for reporting that candidates for promotion were given the answers to a written exam by a superior officer before it was administered. He also asserted that the candidates were given private training sessions. The Port Authority is a bi-state agency governed by federal compact. The Law Division of the Superior Court held that no applicable term of the compact, as amended, addressed whistle-blower lawsuits. The court noted that if both New York and New Jersey had adopted substantially similar whistle-blower laws, a lawsuit might be maintainable. However, she concluded that there were numerous substantive, procedural and remedial differences between the whistle-blower laws of New York and New Jersey that prevented their applicability to the Port Authority or its employees.