



**STATE OF NEW JERSEY  
PUBLIC EMPLOYMENT RELATIONS COMMISSION**

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November 12, 2015

TO: Commissioners  
FROM: Counsel Staff  
RE: Developments in the Counsel's Office Since October 22, 2015

**New appeals**

Somerset Cty Sheriff's Office and PBA Local 177, PERC No. 2016-23

The PBA has appealed from the Commission's order restraining arbitration of a grievance asserting that the position of senior records clerks should have been filled by the most senior applicant.

State of New Jersey and State Troopers Non-Commissioned Officers' Association IA-2016-004

The Association is challenging the Director of Arbitration's determination that the State could withdraw a petition for interest arbitration. An Application for emergent relief was denied by the Appellate Division of the Superior Court. On appeal, the Supreme Court denied the request for a temporary stay but returned the case to the Appellate Division. On remand, the Appellate Division permitted the Association to file on short notice a motion for a stay pending appeal, which it later denied. The Association has now filed an Application for emergent relief with the Supreme Court seeking a stay of the Director's determination.

**Commission Cases**

Timing and amount of payouts to retiring superior officers

City of Newark and Newark SOA, 2015 N.J. Super. Unpub. LEXIS 2436.

The Appellate Division of the Superior Court had granted the City's motion for leave to appeal from an interim relief order I.R. No. 2015-1, directing the City to pay retiring officers

compensation for unused leave allowances on their retirement date as set forth in the parties most recent collective negotiations agreement. After the appeal was briefed, on October 14, 2015, the Court heard oral argument. On October 26 the Court issued an opinion and order dismissing the City's appeal reasoning that leave to appeal should not have been granted (copy attached).

City of Newark and Newark SOA, I.R. No. 2015-3.

On October 15, 2015, a day after hearing oral argument in the previous case, the same panel of judges, in a form order, denied the City's motion for leave to appeal in a case involving identical issues. Docket No. AM-320-14.

### **Other Cases**

#### Standard of Court Review of Arbitration Awards under Tenure Employees Hearing Law

Bound Brook Bd. of Educ. v. Ciripompa, \_\_\_ N.J. Super. \_\_\_ (App. Div. 2015); 2015 N.J. Super. LEXIS 185

In a published, thus precedential, decision, the Appellate Division reinstates an arbitration award issued under the Tenured Employees Hearing Law that had been vacated by a trial court as having been procured through "undue means." The arbitrator imposed a 120-day unpaid suspension, rather than termination, on a tenured teacher who had made electronic communications on his school-issued laptop, transmitting and receiving nude and sexually explicit photos and emails of himself and other adults. On four occasions the social media posts occurred during school hours. A second tenure charge alleged that the teacher had sexually harassed four female teachers, but the arbitrator found that the teacher had not created a hostile work environment. The Court recited:

In his written award, the arbitrator concluded the Board proved the first tenure charge. However, the arbitrator found that: the inappropriate communications involved consenting adults, not students or staff members; all of the inappropriate communications, except four, were not sent or received during work hours or on District property; none of the four inappropriate communications caused any harm apart from a violation of the District's computer and Internet-use policy; and there was no evidence that any students saw or could have seen the inappropriate communications.

#### Promotions: Evaluating charges of improper motive where higher ranked candidate bypassed

In re Daniel Dunn, Fire Captain, City of Wildwood, (2015) N.J. Super. Unpub. LEXIS 2590

The Appellate Division of the Superior Court affirms the decision of the Civil Service Commission rejecting the appeal of a promotional candidate who was bypassed on a civil service list in favor of a (slightly) lower-ranked candidate who is the son of the City's mayor. In evaluating Dunn's allegations of nepotism, bias and favoritism, the Court wrote:

The Commission explained that Dunn "merely speculate[d]" he was a victim of nepotism and cronyism because Troiano is the Mayor's son and Leonetti is a political ally of the Mayor. The Commission further noted that the alleged prior instances of nepotism and cronyism benefitting Troiano's brother "do not establish that [Dunn's] bypass in the instant matter was motivated by nepotism."

The Court held:

- The bypassed candidate has the burden to show the employer was motivated by discrimination, retaliation, or other improper motive.
- The Commission's decision was supported by substantial credible evidence.
- An appeals court "may not substitute its own judgment for the agency's, even though the court might have reached a different result."

Arbitration Award establishing date of retroactive salary and benefits for promoted officer.

Fraternal Order of Police, Newark Lodge No. 12 v. City of Newark, 2015 N.J. LEXIS 1136

The Supreme Court has declined to review an arbitration award establishing the effective date of an appointment for purposes of determining salary and benefits, including seniority, of a police officer who had been initially removed from an eligible list. The Civil Service Commission ordered that the candidate be hired. The arbitration award was vacated by the Chancery Division, but reinstated by the Appellate Division, 2015 N.J. Super. Unpub LEXIS 382.