



**STATE OF NEW JERSEY
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June 22, 2016

TO: Commissioners
FROM: Counsel Staff
RE: Developments in the Counsel's Office Since May 18, 2016

Commission Cases

New Appeals

The Madison Board of Education has filed a Notice that it will petition the Supreme Court to review the decision of the Appellate Division of the Superior Court [In the Matter of Madison Board of Education and Madison Education Association, 2016 N.J. Super. Unpub. LEXIS 1038] holding that a grievance asserting that an employee's family leave entitlements under federal and state laws could be used consecutively, rather than concurrently, was not preempted and could be submitted to binding grievance arbitration.

Court Decisions Received

Director of Conciliation and Arbitration Erred In Resolving Dispute as to Officer's Eligibility for Special Disciplinary Review of his Termination Based upon Certifications from the Parties' Attorneys

In the Matter of Essex Cty College and Timothy Wilson, 2016 N.J. Super. Unpub. LEXIS _____ (App. Div. 2016)

In an unpublished opinion, the Appellate Division of the Superior Court reverses and remands the Director of Conciliation and Arbitration's decision denying appointment of a special

disciplinary arbitrator under N.J.S.A. 40A:14-210 to review the termination of an Essex County College Police Officer. The Director initially dismissed the request for appointment finding that it was not timely filed. The Officer then requested reconsideration. In response, the College argued that the officer was ineligible for special disciplinary arbitration because he did not complete his probationary period. After receiving opposing certifications from the parties' attorneys on that issue, the Director again dismissed the request for appointment finding that the Officer was not permanent. The Appellate Division held that the Director's reliance on conclusory and unsupported certifications from counsel rendered her decision arbitrary and capricious.

Other Cases

Legislation Suspending COLAs did not Violate Constitutional or Contractual Rights of Retirees

Berg v Christie, ___ N.J. ___ (2016)

The Supreme Court, reversing the decision of the Appellate Division of the Superior Court, holds that in adopting P.L. 2011, Ch. 78, allowing the suspension of cost of living adjustments (COLAs), the Legislature did not violate the contractual rights of retirees. The retired employees claimed that the law violated the contract clauses of the state and federal constitutions. The Supreme Court held that prior laws granting COLAs to retirees did not "clearly and unequivocally" establish a contractual right to such payments.

Health Care Premium Payments by Disabled Retirees

Brick Township PBA Local 230 and Michael Spallina v. Township of Brick, ___ N.J. Super. ___ (App. Div. 2016)

In another case construing P.L. 2011, Ch. 78, the Appellate Division of the Superior Court, in a published opinion, reverses a trial court decision which had held that the law obligated a police officer, retired on accidental disability, to contribute toward the cost of his health insurance. The retired officer, the Brick PBA, and the State PBA argued that Ch. 78 does not require any public employee who retires with disability retirement benefits to make contributions towards the cost of his or her health care insurance premiums. The appeals court holds that Ch. 78 does not require ordinary or accidental disability retirees to contribute to the cost of their health insurance benefits. The Appellate Division remanded to the trial court for consideration the retired officer's claim that he was entitled to reimbursement for payments already made.

Post Retirement Changes to Negotiated Health Benefits

Retired Police Officers' Association of Sea Isle City et al, v. City of Sea Isle City, 2016 N.J. Super. Unpub. LEXIS 1330

The retired workers' rights to health care benefits were governed by a number of negotiated agreements between the City and the workers' representatives (four police units and one civilian unit). Each worker was entitled to health benefits in accordance with the applicable CNA in place at the time of the worker's retirement. In June 2010, the City advised the representatives of the negotiating units that retired employees would receive the same health benefits that current employees received under the current CNAs. The retired employees asserted that this change "resulted in decreased benefits overall and a lessening of the level of benefits." The trial court granted summary judgment in favor of the City holding that the language of the relevant CNAs covering police did not entitle officers retiring thereunder to any specific level of benefits that had to be maintained. Although the judge found the CNA covering civilians to be less clear, he ruled that any ambiguity must be resolved in favor of the City.

In an unpublished decision, the Appellate Division of the Superior Court affirms the trial judge's summary judgment regarding the police retirees (thereby allowing the employer to change the benefit level to that provided under the current CNA) but reverses the summary judgment regarding the civilian retirees and remands that claim for further proceedings.

LAD statute of limitations cannot be shortened through private agreement

Sergio Rodriguez v. Raymour Furniture Co. Inc., __ N.J. __ (2016)

The Supreme Cause holds that a private employment agreement cannot shorten the statute of limitations of the Law Against Discrimination and reverses lower court rulings to the contrary. Rodriguez applied for a job at Raymour and Flanagan and filled out an employment application that contained a provision requiring the applicant, if hired, to agree to bring any employment-related cause of action against the employer within six months of the challenged employment action and waive any statute of limitations to the contrary. The statute of limitations on bringing suit under the Law Against Discrimination is two years. Rodriguez filed suit against his employer alleging disability discrimination. The trial court dismissed the action, enforcing the six-month limitations period for filing that employment-related claim, and the Appellate Division affirmed.

The Supreme Court reasons:

The LAD plays a uniquely important role in fulfilling the public imperative of eradicating discrimination. . . There is a huge incentive for employers to thoroughly investigate and respond effectively to internal complaints in order to limit or avoid liability for workplace discrimination. Responsible employers are partners in the public interest work of eradicating discrimination, but such responsible behavior takes time. A shortened time frame for instituting legal action or losing that ability hampers enforcement of the public interest.