



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

PO Box 429
TRENTON, NEW JERSEY 08625-0429

www.state.nj.us/perc

ADMINISTRATION/LEGAL
(609) 292-9830
CONCILIATION/ARBITRATION
(609) 292-9898
UNFAIR PRACTICE/REPRESENTATION
(609) 292-6780

For Courier Delivery
495 WEST STATE STREET
TRENTON, NEW JERSEY 08618

FAX: (609) 777-0089
EMAIL: mail@perc.state.nj.us

August 10, 2016

TO: Commissioners
FROM: Counsel Staff
RE: Developments in the Counsel's Office Since June 30, 2016

Commission Cases

New Appeals

1. The Law Enforcement Supervisors Association (LESA) has appealed the Commission's decision in State of N.J. and LESA, P.E.R.C. No. 2016-81, 42 NJPER 561 (¶156 2016). The Commission held a civil service regulation preempted LESA's grievance challenging the pro-ration of leave allowances for employees who take leaves of absences without pay.
2. The State of New Jersey has appealed the Commission's decision in State and Council of New Jersey State College Locals, [P.E.R.C. No. 2016-014, 42 NJPER 181 (¶45 2015), recon. den., P.E.R.C. No. 2016-80, 42 NJPER 560 (¶155 2016)]. The Commission denied the State's request to restrain arbitration of the CNJSCL's grievance asserting that the State was obligated to negotiate procedures pertinent to awarding tenure to newly hired, previously tenured faculty.
3. A police officer terminated by New Jersey Institute of Technology has appealed from the Director of Arbitration's dismissal of her application to have a special arbitrator appointed to review her discharge under N.J.S.A. 40A:14-209 and -210. The Director determined (Docket No. DA-2016-004) that Selina Perez was discharged during her probationary period, rendering her ineligible to arbitrate her termination.

Court decisions - Commission Cases

Arbitration of termination of resident physician would impair academic freedom

In re State of New Jersey, Rowan University, and Committee of Interns and Residents SEIU Healthcare, 2016 N.J. Super. Unpub. LEXIS 1743

The Appellate Division of the Superior Court affirms the Commission's decision [P.E.R.C. No. 2016-6, 42 NJPER 108 (¶30 2015)] restraining arbitration of a grievance challenging the University's termination of a physician from the urological surgery residency program. The court engaged in a thorough discussion and analysis of the University's right to maintain its academic freedom and medical judgment concerning the performance of physicians in its medical training programs. Finding that arbitration of the grievance could impair those interests the Court held:

Here, . . . CIR was second-guessing Rowan's academic decision to terminate [the physician], was asking the arbitrator to review the factual support for that decision, and was seeking to preclude Rowan from making that academic decision.

Cases related to Commission Cases/Jurisdiction

Employees' wage claims arose under negotiated agreement and could not be litigated in court

White v. Camden County Board of Chosen Freeholders, 2016 N.J. Super. Unpub. LEXIS 1769

The Appellate Division of the Superior Court affirms a dismissal of a lawsuit brought by a corrections officer asserting that the County engaged in a number of improper payroll practices (inaccurate rounding off; miscalculating hours worked; not paying shift differentials in overtime situations) that resulted in White and other similarly-situated officers and sergeants "receiving less pay than they are actually entitled to." Both the trial court and appeals court held that the disputes were cognizable as grievances pursuant to the negotiated agreement between the County and PBA Local 151, the majority representative of the correction officers. Rejecting White's reliance on cases examining whether workers waived rights to pursue statutory claims of discrimination in court or were bound to arbitration agreements, the Court reasoned:

Simply put, the unfair payroll practices that plaintiff complains of fall squarely within the scope of issues encompassed by the CBA. . .[T]he entire premise of plaintiff's complaint is that he and the Union's members are "receiving less pay than they are entitled to" under the CBA. We therefore conclude that payroll disputes and claims of contractual violations of the type plaintiff asserts are subject to the CBA's grievance process and are not subsumed in public policy principles central to statutory claims of workplace discrimination.

Other Cases

Exclusion of evidence in criminal case not bar to its use in administrative appeal of discipline

In re Frank J. Russo, Ocean County, Department of Buildings and Grounds, 2016 N.J. Super. Unpub. LEXIS 1473

The Appellate Division of the Superior Court affirms the decision of the Civil Service Commission upholding the termination of a County employee. Although the employee was acquitted of a theft charge because he was not properly given his “Miranda” warnings, that did not bar using his incriminating statement in administrative proceedings involving his firing.

False statements during IA probe warranted officer’s removal despite no prior infractions

In re Angel Reillo, Camden County Police Department, 2016 N.J. Super. Unpub. LEXIS 1834

The Appellate Division of the Superior Court affirms the Civil Service Commission’s decision upholding the termination of a Camden County Police officer as recommended by an Administrative Law Judge. The officer and his partner discovered a man and a woman in a parked car in a compromising position in a County park after dark. No summons was issued and no incident report was submitted. On a facebook page entitled “Save Camden City Police Department,” the man was identified as a local elected official. During an internal affairs investigation Reillo initially denied spreading rumors that the man was the elected official. The investigation confirmed that the official was not in the car and Reillo subsequently admitted spreading the baseless rumors.

Transfer of public employee not an adverse employment action under discrimination laws

Stewart v. Union County Bd. of Educ., 2016 U.S. App. LEXIS 12877

The United States Court of Appeals for the Third Circuit, in a non-precedential decision, dismisses a civil rights lawsuit brought by a security guard after he was transferred from the high school to the middle school. The new assignment required him to work outside during the winter. The Court holds:

1. An actionable adverse employment action is a significant change in employment status, such as hiring, firing, failing to promote, reassignment with significantly different responsibilities, or a decision causing a significant change in benefits.
2. Actions such as lateral transfers and changes of title or reporting relationships have generally been held not to constitute adverse employment actions.