



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

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September 14, 2016

TO: Commissioners
FROM: Counsel Staff
RE: Developments in the Counsel's Office Since August 10, 2016

Amendments to the New Jersey Employer-Employee Relations Act

Laws addressing Atlantic City's fiscal crisis, took effect May 27, 2016. Included were additions to the unfair practice and interest arbitration sections of the Act, which would allow the Director of the Division of Local Government Services in the Department of Community Affairs to notify the Commission that a "municipality in need of stabilization and recovery:"

1. Is exempt from the impasse procedures (i.e. interest arbitration) of the Act;
(N.J.S.A. 34:13A-16i)
2. The Director shall review grievance & interest arbitration awards involving the municipality;
(N.J.S.A. 34:13A-16j)
3. The Director may notify the Commission that such municipality shall not be subject to unfair practice jurisdiction.
(N.J.S.A. 34:13A-5.4g).

The Commission's web site has been updated to reflect these new sections of the Act.

Commission Cases

New Appeals

Charging Party Phillip Mandato has filed a motion for leave to appeal the Commission's decision (P.E.R.C. No. 2017-8) dismissing most of the unfair practice charges he filed against the Middlesex County Sheriff's office notwithstanding that one charge remains before a Commission Hearing Examiner.

Court Decisions

Rutgers police officer may not arbitrate major disciplinary sanction

In the Matter of Rutgers, the State University, and FOP Lodge 62, 2016 N.J. Super. Unpub. LEXIS 2050

The Appellate Division of the Superior Court affirms the Commission's decision (P.E.R.C. No. 2015-8) restraining arbitration of a grievance challenging major discipline imposed on a member of the Rutgers police officer. The court rejects the FOP's argument that language in N.J.S.A. 34:13A-5.3, allowing employees of the State of New Jersey to review major disciplinary disputes through binding arbitration, applies to Rutgers and its employees. The Court, comparing the general references in the statute to public employers with the specific reference to the State, holds that Rutgers and its employees "are not the State of New Jersey." The Court gave deference to the Commission's interpretation of the Act and concluded that the agency properly applied State v. State Troopers Fraternal Ass'n., 134 N.J. 393 (1993) holding that police may not use binding arbitration to review major disciplinary sanctions (attached).

Other Cases

Failure to seek redress for contract violations through grievance procedure bars lawsuit

Borrello v. Elizabeth Bd. of Educ., 2016 N.J. Super. Unpub. LEXIS 1915

The Appellate Division of the Superior Court affirms the Law Division's dismissal of a multi-count lawsuit filed by a Board of Education employee, Mary Borello, and her husband, Alfonso Borrello, Jr. a candidate for election to the Board. From the start of her employment in 1986, until her husband's candidacy in 2008, Mary received numerous personnel evaluations indicating high marks in skill, punctuality, cooperation, personality, initiative, and composite ratings. At the inception of her employment with the Board, Mary was pressured into supporting political fundraisers for supervisory and school board officials. It was common knowledge that a failure to support a certain candidate would result in job-related retaliation.

Around February 2008, Alfonso filed a petition to be a candidate for election to the Board. From that date, going forward through 2012, Mary was told she was being investigated for misconduct (she was never charged or told the nature of the alleged misconduct), was placed on administrative leave and had increments withheld in successive years. Among the counts in the Borellos' complaint were allegations that the Board violated numerous provisions of its collective negotiations agreement with the Elizabeth Education Association. Because Mary did not invoke the grievance procedure, the court held that pursuit of the alleged violations of the CNA were barred because she failed to exhaust administrative (i.e. contractual) remedies.