



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

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November 15, 2016

TO: Commissioners  
FROM: Counsel Staff  
RE: Developments in the Counsel's Office Since October 13,  
2016

Commission Cases

New Appeals

International Academy of Trenton Charter School and International Academy of Trenton Charter School Education Association/NJEA, P.E.R.C. No. 2017-24, 43 NJPER \_\_\_ (¶\_\_ 2016), 2016 NJ PERC LEXIS 94

The Academy has appealed from the Commission's decision, which declined to review the Director of Representation's Decision and Order certifying the Association as the exclusive representative of an appropriate unit of Academy employees on the basis of a check of the Association's submission of authorization cards.

Rutgers, The State University of NJ and FOP Lodge No. 62, P.E.R.C. No. 2017-17, 43 NJPER 117 (¶35 2016)

The FOP has appealed from the portion of the Commission's decision restraining arbitration of a grievance contesting the merits of a 96-hour suspension of a Rutgers police officer.

## Court Decisions

### Elimination of clerk's evening hours not arbitrable

In re Township of Clark and Union Council No. 8, 2016 N.J. Super. Unpub. LEXIS 2348

The Appellate Division of the Superior Court, in an unpublished opinion, affirms the Commission's decision [P.E.R.C. No. 2016-55, 42 NJPER 372 (¶105 2016)] restraining binding arbitration of a grievance filed by Council No. 8 on behalf of a records clerk. By agreement between the Township and Council No. 8, when the municipal court conducted evening sessions, the clerk worked an additional two hours and was given compensatory time off the following day. However, evening court sessions had ceased several years ago, and the chief of police determined that the end of those sessions, coupled with the ability to send records to the public electronically, eliminated the need for evening work by the clerk. The clerk was reassigned to daytime hours only. The Commission found that there was no showing that the change increased the clerk's workload and, on balance, the Township's interest in determining when to offer services to the public predominated over the employee's interests. The Court independently applied the balancing test required by Local 195, IFPTE v. State, 88 N.J. 393, 403-405 (1982) and concurred with the result reached by the Commission.

### Other Court Cases

### Trooper's removal reversed and case remanded

In re SFC Scott Turner #4931, A-2479-14T4, 2016 N.J. Super. Unpub. LEXIS 2347

The Appellate Division of the Superior Court, in an unpublished opinion, reverses the decision of the Superintendent of the State Police to remove a police sergeant on charges that he violated departmental rules and regulations by attending law school while on sick leave, willfully disobeying numerous orders to submit to internal affairs investigative interviews, behaving in a disrespectful manner toward the Superintendent and others, and insubordination. The charges had been transmitted by the Superintendent to the Office of Administrative Law (OAL) for hearing by an Administrative Law Judge (ALJ). The sergeant moved to dismiss the charges, arguing that they were untimely under N.J.S.A. 53:1-33, requiring same to be "filed no later than the 45<sup>th</sup> day after the date on which the person filing the complaint obtained sufficient information to file the matter upon which

the complaint is based." The ALJ found the charges untimely and in an initial decision, ruled that they should be dismissed. The Superintendent reversed and attempted to remand the matter for a hearing. However, the OAL responded that under its regulations, it lacked jurisdiction because the agency head had not retransmitted the matter for hearing. Rather than take that action, the Superintendent issued a final decision sustaining the charges and ordering the sergeant's removal. On appeal, On appeal, the Court reverses and remands the case to the OAL for a threshold determination on the timeliness of the charges, and if timely, a determination on the merits. Following earlier caselaw, the Court also ruled that the Office of the Attorney General would render a final agency determination if the ALJ sustained any of the charges because the sergeant had filed a lawsuit against the Superintendent prior to the commencement of the disciplinary matter.

Discipline: Formal reprimand did not bar further suspension

Michael D. Bozarth v. Borough of Glassboro, 2016 N.J. Super. Unpub. LEXIS 2432

The Appellate Division of the Superior Court, in an unpublished opinion, upholds a 75-day disciplinary suspension of a police officer employed by a non-civil service municipality. The Court reversed a Law Division decision which held that the municipality could not suspend the police officer because it had already issued a letter of reprimand addressing the same conduct that was the basis for the suspension.

Principal can be liable for sexual harassment of pupil's parent

Colombo v. Bd. of Educ. for the Clifton Sch. Dist., 2016 U.S. Dist. LEXIS 150373

Colombo, the mother of two students in the Clifton school district, filed a multi-count federal lawsuit against the district, the members of the Board of Education, and a school principal. In her complaint, the mother alleged that the principal sexually harassed her and deliberately changed some of the son's grades, telling her that he would protect her son from disciplinary charges in the hopes that she would acquiesce to his sexual advances. The Court holds that although the parent is not an employee, the principal could be liable for violating federal civil rights laws, stating:

Plaintiff has sufficiently alleged that [the principal] exercised power "possessed by virtue of state law and made possible only because [he was] clothed with the

authority of state law." . . . [T]he alleged sexual harassment occurred during meetings where she sought to legitimately discuss her son's academic performance. Allegedly, [the principal] offered to exercise his power . . . to protect Plaintiff's son from disciplinary action in exchange for sexual favors. [The principal] could not have harassed [Plaintiff] absent his authority as a State agent.

The principal's motion to dismiss the federal civil rights sexual harassment complaint and an alleged violation of the New Jersey Law Against Discrimination were denied. These counts can proceed. The Court dismissed other claims against the principal and all claims against the Board and Board members.