



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

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February 15, 2017

TO: Commissioners  
FROM: Counsel Staff  
RE: Developments in the Counsel's Office Since January 19, 2017

**Commission Cases**

In re Jersey City Housing Auth., 2017 N.J. Super. Unpub. LEXIS 194

The Appellate Division of the Superior Court, in an unpublished opinion, affirms the Commission's decision [P.E.R.C. No. 2015-70, 41 NJPER 477 (¶148 2015)] adopting a hearing examiner's recommendation that unfair practice charges filed by a laid off Housing Authority employee against his employer and his union be dismissed. The opinion is attached.

**New Appeals**

West Morris Regional High School Board of Education and West Morris Regional Education Association, P.E.R.C. No. 2017-29

The Association has appealed the Commission's decision holding that language fixing the start and end dates of the school year could not be memorialized in a negotiated agreement.

City of Perth Amboy and Perth Amboy PBA Local 13, P.E.R.C. No. 2017-30

The PBA has appealed the dismissal of its unfair practice charge alleging that the City changed the method for calculating paid military leave, thereby diminishing the benefit.

## Other Cases

Jersey City POBA v. City of Jersey City, 2017 N.J. Super. Unpub. LEXIS 165

In a case that highlights the difference between pension benefits and benefits to be paid on retirement pursuant to a collective negotiations agreement (CNA), a trial court judge, in an unpublished opinion, confirms an arbitration award holding that an officer awaiting retirement, who was indicted for alleged misconduct while employed, was entitled to receive the negotiated benefits.

The officer suffered an on-the-job injury in 2015, which prevented him from performing his duties. He submitted a disability retirement application to the Police and Fire Retirement System (PFRS) in March 2016. However, on June 14, 2016, the officer was arrested and indicted on criminal charges based on an alleged 2014 scheme by him and others to falsify and present for payment off-duty employment vouchers for details that were never actually worked. Also in June 2016, the officer was suspended indefinitely pending criminal charges. According to various provisions of the CNA, the officer was entitled to payments for unused compensatory, vacation and terminal leave, totaling \$93,000, which the City refused to pay. The POBA took the claim to arbitration, and its grievance was sustained, the arbitrator noting:<sup>1</sup>

[A] police officer retires from the JCPD and not from PFRS; and . . . a pension application is made to PFRS and not the JCPD. [The] clear, irrefutable language of the [CNA] does not reference anything about retiring in good standing or that in order to receive these benefits you need approval from PFRS."

The Arbitrator also found that no language in the CNA makes retirement contingent upon approval of the pension application. The decision noted that "[t]here is nothing in the record to show that he did not retire from the JCPD."

The Court concluded:

Given the lack of language in the negotiated Agreement directly linking the receipt of the benefits at issue here, which are separate and apart from any other pension benefits to which [the officer] may or may not be statutorily entitled, to eligibility to receive a pension under N.J.S.A. 43:1-3 or N.J.A.C. 17:1-6.1, the Arbitrator's decision is fair and clearly meets the "reasonably debatable" standard to be confirmed.

The Court also concluded that the City had not established that the payment of benefits was contrary to public policy.

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<sup>1</sup> At the time of the decision, PFRS had not acted on the officer's retirement application.