



STATE OF NEW JERSEY  
PUBLIC EMPLOYMENT RELATIONS COMMISSION

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April 20, 2017

TO: Commissioners  
FROM: Counsel Staff  
RE: Developments in the Counsel's Office Since February 15, 2017

**COMMISSION CASES**

New Appeals

Ocean Tp. Bd. of Ed. and Waretown Ed. Ass'n, P.E.R.C. No. 2017-45 and 2017-53.

The Association has appealed from the decision restraining arbitration of a grievance challenging the appointment of the superintendent's secretary to two part-time positions that she had held while a member of the negotiating unit and of the decision denying reconsideration.

Superior Court, Appellate Division

Rutgers, The State University of New Jersey, and Brian Clancy, A-2184-15T1, 2017 N.J. Super. Unpub. LEXIS 917 (App. Div. Apr. 13, 2017)

In an unpublished opinion, the Appellate Division of the Superior Court affirms the Commission's decision [DA-2016-003] denying as untimely Clancy's request for the appointment of an arbitrator under N.J.S.A. 40A:14-210(b) and N.J.S.A. 19:12-6.3(b) to review his termination from the University's police force, stating "Clancy's late filing under N.J.S.A. 40A:14-210(b) deprived PERC of jurisdiction to appoint an arbitrator."

In re CWA, Local 1040, State of New Jersey and Judy Thorpe, 2017 N.J. Super. Unpub. LEXIS 717

The Appellate Division of the Superior Court, in an unpublished opinion, affirms the Commission's decisions [P.E.R.C. No. 2014-71, 40 NJPER 512 (¶164 2014) and P.E.R.C. No. 2013-29, 39 NJPER 205 (¶66 2012)] dismissing unfair practice charges filed by Thorpe, a terminated Juvenile Justice Commission employee, against her employer and her union. C.W.A. had processed Thorpe's grievance challenging her termination and provided a C.W.A. attorney to represent her at an arbitration hearing. The arbitrator sustained her discharge. The Commission's Deputy Director of Unfair Practices noted the lack of facts presented to support that the "C.W.A. acted arbitrarily, discriminatorily or in bad faith in its handling of Thorpe's grievance arbitration case." The charge against the State was found to be out of time.

### **Cases Related to Commission Cases**

#### Unappealed Commission decision barred re-litigation of same claims in federal court

Bridge v. Fogelson, 2017 U.S. App. LEXIS 4519 (3rd Cir.)

The United States Court of Appeals affirms the decision of the United States District Court for the District of New Jersey dismissing the multi-count complaint filed by James Bridge who was involuntarily removed as President of the North Warren Education Association. The District Court held that Bridge failed to state a claim upon which relief could be granted. However, the Court of Appeals noted that Bridge had unsuccessfully pursued his federal claim in unfair practice charges before the Commission, which dismissed two of his three charges. P.E.R.C. No. 2016-85, 43 NJPER 31 (¶9 2016). Noting that Bridge eschewed his right to appeal from the Commission's adverse rulings, the Court held that the doctrine of collateral estoppel barred Bridge from re-litigating the claims raised before the Commission as its unappealed ruling was now a final judgment entitled to preclusive effect in federal court.

#### Other decisions

#### Time limits in disciplinary law applicable to public safety officers prevail over APA deadlines

In re John Restrepo, Department of Corrections , 2017 N.J. Super. LEXIS 42

In a published opinion, the Appellate Division of the Superior Court resolves a conflict between two statutes, the Administrative Procedure Act and L. 2009, c. 16 regarding the deadline for the Civil Service Commission (CSC) to issue a final decision in an appeal by a terminated police officer. The Court noted that the APA and the 2009 Act require conflicting procedures for an agency head or the CSC, as the case may be, to request an extension of time to issue a final decision. Under the APA, a single forty-five-day extension may be awarded. Any further extension may only be granted with unanimous consent of the parties. N.J.S.A. 52:14B-10(c).

By contrast, the 2009 Act grants the CSC discretion to give itself one fifteen-day extension, and any subsequent extensions may be granted by the Chief ALJ upon a showing of good cause. N.J.S.A. 40A:14-204. The Court held that in a disciplinary appeal involving a law enforcement officer or firefighter, the specific procedures in the 2009 Act govern over inconsistent procedures generally applicable under the APA. It found the Commission had acted within the limits set by the 2009 Act.

#### Dismissal of some charges against officer requires re-examination of penalty imposed

In re Valerie Bradbury, A-1692-15T4, 2017 N.J. Super. Unpub. LEXIS 739 (App. Div. Mar. 27, 2017)

The Appellate Division of the Superior Court, in an unpublished opinion, affirms in part and reverses in part a decision of the Civil Service Commission (CSC) imposing a forty-five-day suspension without pay. The Court remands the case to CSC for reconsideration of the penalty imposed.

Bradbury was served with a preliminary notice charging her with nine violations of the Police Department's rules and regulations that largely arose out of the same set of operative facts. At a departmental hearing, Bradbury was found guilty of all nine charges and a forty-five-day suspension without pay was imposed. Bradbury, a 22-year veteran, appealed. At the conclusion of an evidentiary hearing, an Administrative Law Judge concluded that six of the nine charges were supported by the evidence but the other three charges were not. Citing Bradbury's disciplinary history, which included a prior thirty-day suspension, the ALJ found that the forty-five-day suspension without pay remained reasonable.

The Court found that an additional charge should not have been sustained and remanded the case to the ALJ for reconsideration of the penalty, noting:

In so remanding, we do not mean to suggest the same suspension may not be imposed, only that it should be reconsidered because the foundation upon which it was originally based has been quantitatively diminished.

#### Ending Troopers free rides on toll roads did not violate collective negotiations agreement

State of New Jersey (State Police) v. State Troopers Fraternal Ass'n, A-3523-15T2, 2017 N.J. Super. Unpub. LEXIS 927 (App. Div. April 13, 2017)

The Appellate Division of the Superior Court, in an unpublished opinion, affirms the decision of a trial court vacating an arbitration award that had sustained a grievance filed by the State Troopers Fraternal Association (STFA). The arbitration concerned a dispute over whether the Division of State Police was required to reimburse State Troopers for their personal commuting

expenses on the State's major toll roads. The Court affirmed because it concluded that the revoked benefit had not been the product of the collective negotiations relationship between the State and the STFA, but instead had been gratuitously bestowed by the New Jersey Highway Authority and the South Jersey Transportation Authority, the operators of the toll roads in question. The Court held that the past practice and preservation of rights clauses of the State-STFA collective negotiations agreement did not apply to benefits provided by third parties who were not part of the collective negotiations relationship.