



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

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September 21, 2017

TO: Commissioners  
FROM: Counsel Staff  
RE: Developments in the Counsel's Office Since August 10, 2017

**Commission Cases**

**New Appeals**

The City of Millville has appealed from P.E.R.C. No. 2018-4 (Dkt. No. CO-2016-251) finding that the City engaged in unfair practices by unilaterally reducing the maximum salary range of employees members represented by New Jersey Civil Service Association, Cumberland Council 18.

The Fort Lee Board of Education has appealed from the portion of P.E.R.C. No. 2017-71 (Dkt. No. CO-2015-231) holding that the Board engaged in unfair practices when it refused to negotiate with the Fort Lee Education Association over some aspects and effects of its decision to reschedule and restructure Spring break.

## App. Div. Decision

### Expedited scope of negotiations ruling in fire fighter interest arbitration mostly affirmed

In the Matter of City of Atlantic City and Atlantic City Prof'l Firefighters Int'l Ass'n of Firefighters, Local No. 198, 2007 N.J. Super. Unpub LEXIS \_\_, (App Div. Dkt. No. A-3817-14T2)

The Appellate Division of the Superior Court, in an unpublished decision, affirms, with two exceptions, expedited scope of negotiations determinations [P.E.R.C. No. 2015-63, 41 NJPER 439 (¶137 2015)] made to facilitate an interest arbitration proceeding between the City and the representative of its fire fighters. The Commission ruled on 35 contract provisions or proposals. The IAFF challenged 14 of those rulings, and the City asserted that 4 issues found to be mandatorily negotiable should be reversed. The Court modified the Commission determination concerning the effective date of a statutory cap on payment for unused accumulated leave holding that it did not take effect until after December 31, 2012 because the parties' negotiated agreement had not expired when the new law (P.L. 2010, c. 3.) went into effect. The Court also found mandatorily negotiable language concerning a joint management/union committee's ability to make recommendations, rather than binding decisions, on equipment related to employee safety. All other challenged rulings were affirmed (copy attached).

### **Other Decisions**

Trial court disciplinary determination reversed and remanded due to application of erroneous standard of review

Freddie Mitchell v. Borough of Roseland, 2017 N.J. Super. Unpub. LEXIS 2020 (Dkt. No. A-5752-14T2)

The Appellate Division of the Superior Court, in an unpublished opinion, vacates a trial court decision upholding a police officer's termination. The trial court limited its review of the Borough's actions and the departmental hearing officer's decision to assess whether they were "arbitrary, capricious or unreasonable." The standard applicable to trial court review of disciplinary actions taken against a non-civil service police officer is de novo on the record below with an opportunity for the introduction of supplementary evidence. The appeals court remands the matter for a new trial court proceeding.

Commission of Education correctly concluded that custodian employed on annual basis was not tenured, a conclusion consistent with the terms of the parties' CNA

Ali Feti v. Board of Education of the Borough of Netcong, Morris County, et al., 2017 N.J. Super. Unpub. LEXIS 2015 (Dkt. No. A-2584-15T2)

The Appellate Division of the Superior Court, in an unpublished opinion, affirms the decision of the Commissioner of Education that a custodian had not acquired tenure. The collective negotiations agreement explicitly provides that custodians shall execute annual employment contracts and shall not receive tenure. The Court's opinion discusses N.J.S.A. 18A:17-3 and Wright v. Board of Education of the City of East Orange, 99 N.J. 112, 119 (1985), holding that the collective negotiations representatives of janitors not employed for fixed terms may negotiate for contractual job security.

Non-tenured support staff member not entitled to arbitration to contest non-renewal under CNA provision pertaining to layoffs

Elizabeth Board of Education v. Elizabeth Education Association, 2017 N.J. Super. Unpub. LEXIS 2086 (Dkt. No. A-3371-15T2)

The Appellate Division of the Superior Court, in an unpublished opinion, affirms a Law Division order permanently restraining arbitration of a grievance filed by the Association on behalf of a non-tenured, non-certificated technician. The technician, through a private attorney, reached a settlement with the Board. However, the Association asserted that the layoff of the technician violated reduction in force procedures in the parties' agreement which it was entitled to enforce. The Court decided to construe the agreement and held:

As a non-tenured staff member, he had no right to re-employment for the next school year. Thus, non-renewal of his contract due to budgetary constraints did not constitute a layoff under the provisions of the CBA.

Police officer entitled to defense, not also indemnification

Lieutenant John Kaminskas, et al. v. State of New Jersey, etc., 2017 N.J. Super. Unpub. LEXIS 2207 (Dkt. No. A-3528-14T1)

The Appellate Division of the Superior Court, in an unpublished opinion, holds that N.J.S.A. 59:10A-1 is clear that the Attorney General is obligated to provide a defense for civil action filed against current or former state employees only. It also holds based on case law that the "unique role of county prosecutorial employees" requires the Attorney General to provide them a defense in civil actions involving investigation and prosecution. It rejects a claim for indemnification by the State made by a County police officer, noting that N.J.S.A. 40A:14-117a requires that a County is to provide a defense for County law enforcement personnel.

Employee's failure to disclose part-time employment warranted denial of unemployment benefits on account of his nonrenewal from former full-time position with same employer.

George M. Thorn v. Board of Review, et al., 2017 N.J. Super. Unpub. LEXIS 2211 (Dkt. No. A-3452-15T2)

A full-time physical education teacher who was not renewed but later accepted a part time position (2-days per week) with the same district applied for and received unemployment benefits for that year. The application process was via telephone and required yes/no responses to automated questions. He answered “no” to “are you employed” because he was no longer working full time. The Board of Review concluded that teacher’s failure to disclose his part-time employment warranted order directing him to refund the benefits he received and to pay an additional penalty. The Appellate Division affirmed in an unpublished decision.