



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

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November 20, 2018

TO: Commissioners
FROM: Counsel Staff
RE: Developments in the Counsel's Office since October 24,
2018

COMMISSION CASES

Court Decision

Tp of Irvington and Irvington FF Ass'n, IAFF Local 305, IR
2019-7, CO-2019-078, App. Div. Dkt. No. AM-000096-18

The Irvington Firefighters Association, IAFF Local 309, sought additional interim relief beyond that granted by a Commission Designee in I.R. No.2019-007. The Appellate Division of the Superior Court entered an order denying the IAFF's motion for leave to appeal.

New Appeals

Bergen Cty Sheriff's Office and PBA Local 49, PERC 2019-7, SN-
2018-33, App. Div. Dkt. No. A-1157-18

An appeal has been taken from the denial of the Sheriff's request to restrain arbitration of a compensation grievance filed by the PBA.

Motions for Leave to Appeal

Cliffside Park B/E and Cliffside Park Ed Ass'n, IR 2019-8, CO-2019-075 App. Div. Dkt. No. AM-000116-18

The Board seeks leave to appeal an interim relief order directing the payment of salary increments following expiration of the parties' expired contract.

Englewood B/E and Englewood Teachers' Ass'n, IR 2019-9, CO-2019-085, App. Div. Dkt. No. AM-000139-18

The Board seeks leave to appeal an interim relief order directing the payment of salary increments following expiration of the parties' expired contract.

OTHER CASES

Age Discrimination in Employment Act covers public employers without regard to size of staff

Mount Lemmon Fire Dist. v. Guido, 2018 U.S. LEXIS 6639

The United States Supreme Court holds that the Age Discrimination in Employment Act (ADEA) applies to all public employers, regardless of the size of the work force. It rules that two terminated Fire Captains, aged 46 and 54, the small department's oldest employees, were protected by the age discrimination law. A 1974 amendment to 29 U.S.C. § 630(b) provided:

(b) The term "employer" means a person engaged in an industry affecting commerce who has twenty or more employees for each working day in each of twenty or more calendar weeks in the current or preceding calendar year: . . . The term also means (1) any agent of such a person, and (2) a State or political subdivision of a State and any agency or instrumentality of a State or a political subdivision of a State, and any interstate agency, but such term does not include the United States, or a corporation wholly owned by the Government of the United States.

Some cases had construed the 20-employee threshold as applicable to both private and public employers. Affirming the U.S. Court of Appeals for the Ninth Circuit, Justice Ginsburg, writing for a unanimous court, holds that the two-section structure of the amendment established separate categories and made the 20-employee threshold inapplicable to public employers.

Given Board's wide discretion over granting tenure, denial of tenure to teacher returning from difficult pregnancy was not discriminatory

Marilyn Ramirez v. Board of Education of the Township of Orange, et al. 2018 N.J. Super. Unpub. LEXIS 2380 (Dkt No. A-5286-15T2)

The Appellate Division of the Superior Court, in an unpublished opinion, holds that the Board did not discriminate against a non-tenured teacher on the basis of her pregnancy when it failed to offer her a contract that would have given her tenure. It noted that precedent holds that local boards of education have an almost complete right to terminate the services of a teacher who has no tenure and is regarded as undesirable by the local board.

Here, the Board did not fire plaintiff. Instead, and well after her pregnancy, the Board elected – within its discretion – not to offer plaintiff a tenured position. Plaintiff was not automatically entitled to a tenured teaching position, but more importantly, the Board concluded that she performed [before her pregnancy leave] substandard teaching work.

Ability to grieve discipline barred employee's court challenge

Valerie L. Smith v. Burlington County Bridge Commission, 2018 N.J. Super. Unpub. LEXIS 2289 (Dkt No. A-3091-16T3)

The Appellate Division of the Superior Court, in an unpublished opinion, holds that because Smith's employer considered her grievance, she could not sue it for breach of contract as a "third-party beneficiary" of the collective negotiations agreement (CNA). The court found that the CNA illustrated that the employer and the union did not intend to grant individual union members standing to challenge disciplinary actions in court.

Poor disciplinary record as corrections officer warranted removal from Sheriff's officers list.

In the Matter of Christie Monserrate, etc., 2018 N.J. Super. Unpub. LEXIS 2465 (Dkt No. A-2090-16T3)

The Appellate Division of the Superior Court, in an unpublished opinion, upholds the action of the Civil Service Commission removing the name of a Sheriff's Officer candidate from a list of eligibles. Burlington County allowed a Corrections Officer, who had been disciplined six separate times, to resign instead of

pursuing charges seeking her removal. Two years later she took and passed an open competitive exam for Sheriff's officer, ranking 148 out of 200 eligibles. The candidate appealed. The Court holds: The record amply supports the Commission's conclusion that appellant's unsatisfactory employment record in her prior position as a Corrections Officer "reflect[ed] poorly on [her] ability to perform the law enforcement duties" of a Sheriff's Officer. . ."

Federal Court declines to rule on state employee's DFR claim

Kaminski v. State Dep't of Military & Veterans Affairs, 2018 U.S. Dist. LEXIS 157191 (D.N.J. Sept 13, 2018)

In an unpublished opinion, a United States District Court declines to exercise jurisdiction over a claim that the Communications Workers of America breached its duty of fair representation in handling the discharge grievance of a teacher employed by the State Department of Military and Veterans' Affairs. Kaminski filed a multi-count complaint asserting both federal and state causes of action. The court dismissed the federal claims and declined to exercise jurisdiction over alleged state law violations including an assertion that CWA had breached N.J.S.A. 34:13A-5.3.