



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

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March 15, 2019

TO: Commissioners  
FROM: Counsel Staff  
RE: Counsel's Office Developments since February 28, 2019

**COMMISSION CASES**

**No new appeals**

**Appeal withdrawn**

The Jersey City Police officers Benevolent Association has withdrawn its appeal of P.E.R.C. No. 2018-22, 44 NJPER 273 (¶77 2017) affirming an interest arbitration award issued to resolve a negotiations impasse between the POBA and the City.

**OTHER CASES**

Hearing required on claim promotion bypass was retaliation for filing grievances

In re Brown, 2019 N.J. Super. LEXIS 29 \_\_\_\_ N.J. Super. \_\_\_\_ (Dkt. No. A-5470-16T1)

In a published, thus precedential decision, the Appellate Division of the Superior Court, holds that the Civil Service Commission erred when it failed to hold an evidentiary hearing before rejecting Brown's claim that bypassing him for promotion

constituted retaliation for his grievances stemming from an earlier promotional proceeding. Brown was denied promotion to the position of sergeant when his employer chose the first, third and fourth police officers from a certified list, skipping over Brown who placed second; the first and third are Caucasian officers, while Brown and the fourth are African-American. The Civil Service Commission did not conduct an evidentiary hearing but simply rejected what it called Brown's "mere allegations" that the employer retaliated against him. The court remanded for an evidentiary hearing so the parties' factual disputes could be resolved and so the Commission might determine - even if not expressly or clearly raised previously - whether the employer's reasons for skipping over appellant were unlawfully pretextual.

Law mandating public notice and hearing applied to "rescission" of Superintendent's contract

Wall Twp. Educ. Ass'n v. Bd. of Educ. of the Wall Twp. Sch. Dist., 2019 N.J. Super. Unpub. LEXIS 575 (Dkt No. A-4885-17T1)

The Appellate Division of the Superior Court, in an unpublished decision, reverses a ruling of the Commissioner of Education which had held that the Wall Township Board of Education did not violate statutory public notice and public hearing requirements when it approved a new contract for its Superintendent of Schools. The Superintendent of Schools was working under an employment contract effective from September 23, 2014 through June 30, 2019. N.J.S.A. 18A:11-11 provides:

A board of education shall not renegotiate, extend, amend, or otherwise alter the terms of a contract with a superintendent of schools, . . . unless notice is provided to the public at least 30 days prior to the scheduled action by the board. The board shall also hold a public hearing and shall not take any action on the matter until the hearing has been held. The board shall provide the public with at least 10 days' notice of the public hearing.

After salary caps for Superintendents were raised in May, 2017, the County Superintendent advised Superintendents,

"[I]f their current employment contract was amended, 'there must be an advertised public hearing on [their] contract amendment[s],' but "[i]f [they] rescind [their] old contract[s] and a new contract is negotiated

that replaces any existing contract, then there is no public hearing.

The Wall Superintendent and the Board agreed to "rescind" her current contract and replace it with a new three year agreement with a higher salary and additional vacation leave.

The Wall Education Association, joined by individual members and a Township resident and parent of district school students, petitioned the Commissioner to set aside the new contract alleging the statute's public notice and hearing requirements were not followed. An Administrative Law Judge, noting the term "rescind" was not in the statute recommended that the Board had not violated the law and the Commissioner agreed.

Reversing, the Court noted that the law's purpose was to promote transparency into school district operations and held:

The Legislature's clear mandate in the statute was the dual purpose of public notice and a public hearing when a board of education renegotiates, extends, amends, or alters an existing contract with its superintendent. That is exactly what occurred here. Upon being advised that Dyer's salary could be raised due to an increase of the Department's cap on superintendents' salaries, respondents negotiated a higher salary, an extended employment term and additional vacation time for Dyer. The fact that they mutually "rescinded" Dyer's existing contract should not circumvent the statute's requirements, regardless of Dr. Richens' email instruction.

Appeals court reinstates arbitration award restoring job of tenured teacher

State-Operated Sch. Dist. of Newark v. Dawkins, 2019 N.J. Super. Unpub. LEXIS 570 (Dkt No. A-4232-16T3)

The Appellate Division of the Superior Court, in an unpublished decision, reinstates the decision of an arbitrator issued under the Tenured Employees Hearing Law, directing that a tenured math teacher be restored to his job. The Chancery Division had vacated the arbitrator's award finding it was procured by "undue means."

The arbitrator found that the District's failure to comply with the statutory procedure for conducting teacher evaluations adversely affected his annual summary evaluations. The trial judge found the arbitrator had failed to apply the standard of review required for a tenure charge and did not analyze whether the errors the arbitrator found had "a material effect on the outcome of the evaluation," other than "a fleeting reference to materiality. The case was remanded to the Commissioner for the appointment of a different arbitrator.

The appeals court ruled:

- The arbitrator made specific findings as required under N.J.S.A. 18A:6-17.2(a) and (b).
- There were no proofs to vacate the award under grounds of undue means.
- The arbitrator made detailed findings supporting his conclusion that the District failed to substantially adhere to the statutorily required evaluation process.

Allowing unauthorized overtime; falsifying salary, warranted firing of acting personnel director

In re Johnson-Taylor, 2019 N.J. Super. Unpub. LEXIS 451 (Dkt No. A-3069-16T3)

The Appellate Division of the Superior Court, in an unpublished decision, affirms the decision of the Civil Service Commission (CSC) directing the discharge of the City of Paterson's assistant, then acting, director of personnel who approved unauthorized overtime payments for City employees and herself and who misrepresented her income on an application for housing subsidies. Even though the City merely demoted her to a lower position and an Administrative Law Judge recommended a six month suspension, the CSC ruled that it was not required to apply progressive discipline and concluded that Johnson-Taylor should be discharged. The appeals court agreed ruling:

The agency's observations regarding the sensitivity of Johnson-Taylor's position with the appointing authority, including interaction with the Commission itself in employee matters, are entitled to great deference. An employee in that position cannot continue after the misrepresentation of income involved in the falsification of documents. We are satisfied that the Commission's findings are not clearly mistaken, nor are they so "plainly unwarranted that the interests of justice demand intervention and correction."