



**STATE OF NEW JERSEY
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September 19, 2019

TO: Commissioners
FROM: Counsel Staff
RE: Developments in the Counsel's Office since June 19,
2019

NEW APPEALS

A notice of appeal from Township of Bedminster and PBA Local 366, Docket No. IA-2019-017, P.E.R.C. No. 2020-011, affirming an interest arbitration award, has been filed with the Appellate Division of the Superior Court by the PBA.

COMMISSION CASES

No decisions received.

CASES RELATED TO COMMISSION CASES

Moshe Rozenblit, et al. v. Marcia V. Lyles, et al.,
___ N.J. Super. ___, 2019 N.J. Super. LEXIS 132 (App. Div.),
reversing 2017 N.J. Super. Unpub. LEXIS 3202 (Ch. Div.)

In a published, thus precedential, decision the Appellate Division of the Superior Court, reverses a trial court decision and holds that granting two Jersey City Education Association officers fully paid union leave with benefits is not permissible under N.J.S.A. 18A:30-7. That statute allows a "board of education to fix either by rule or by individual consideration, the payment of salary in cases of absence not constituting sick leave. . ." The Court holds the Legislature did not expressly or implicitly intend to authorize boards of education to enter into this type of contractual arrangement. The disbursement of public funds pursuant to this contractual arrangement was an ultra vires

act by the Board. Because it decided the case on an education law, the court declines to rule on the claim by the plaintiffs (a Jersey City resident and another person identified as a resident of the state) that the benefit is a gift of public monies in violation of the state constitution.

The trial court had considered and rejected the gift of public monies argument noting that court decisions dating back to 1974 held that compensation and benefits stemming from collectively negotiated agreements or conferred by statute were not gifts. The trial judge cited, but did not rely on, PERC decisions holding that union leave was mandatorily negotiable. Brick Twp. Bd. of Ed. v. Brick Twp. Educ. Assn., 2011 NJ PERC LEXIS 159 (2011), City of Newark, PERC No. 90-122, 16 NJPER 21, (¶164), 1990 NJ PERC LEXIS 228. PERC was not a party to this matter, which was decided by the court on very narrow grounds with no consideration of the NJ Employer-Employee Relations Act or the Local 195 negotiability test.

OTHER CASES

LMRDA does not apply to public sector unions

Policastro v. N.J. Educ. Ass'n, 2019 U.S. App. LEXIS 27671 (3rd Cir.)

The U.S. Court of Appeals for the Third Circuit affirms a federal district court ruling that the Labor Management Reporting and Disclosure Act (LMRDA) does not apply to the New Jersey Education Association as it is comprised exclusively of employees of government entities and is wholly composed of public sector organizations. Policastro, a public school teacher who was unsuccessful in a bid for an office in the NJEA, sought to have the Secretary of Labor investigate alleged election irregularities that he claimed violated the LMRDA. The federal appeals court confirmed that unions like the NJEA are not covered by Title IV of the LMRDA because public school districts, as political subdivisions, do not meet the definition of a labor organization engaged in an industry affecting commerce within the meaning of the LMRDA as defined in 29 U.S.C. § 402(i) and (j).

Officer's allegation of another officer's misappropriation of PBA funds was First Amendment matter of public concern

Corcoran v. Cauwels, 2019 U.S. Dist. LEXIS 135013

A federal district court declines to dismiss a lawsuit filed by a police officer, a PBA vice President, against the chief of

police. The officer alleged that a superior officer was using money earmarked for a "Police Unity Tour" bicycle ride for his personal benefit. He requested an accounting of the funds and filed a government records request. Thereafter the officer was subjected to several internal affairs complaints and investigations. The Defendant argued to the district court that the alleged corruption occurred within and affected only the union and was thus not a matter of public concern. The Court wrote:

Members of the public would be interested to learn of corruption or other wrongdoing by police officers in any capacity. See Baldassare v. New Jersey, 250 F.3d 188, 198 (3d Cir. 2001) ("[T]he public's interest in exposing potential wrongdoing by public employees is especially powerful.").

Furthermore, there is no indication in the Complaint, and Defendant does not argue, that Plaintiff made the OPRA requests because of a personal grievance. Swineford v. Snyder Cty., 15 F.3d 1258, 1274 (3d Cir. 1994) (holding that personal grievances are not a matter of public concern). At this stage, Plaintiff has plausibly pled a matter of public concern by alleging that he learned individuals were misappropriating union funds that were earmarked for a police bicycle tour, requested an accounting from the accused individuals at a PBA meeting, and made OPRA requests for emails between the individuals.