



STATE OF NEW JERSEY
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October 24, 2019

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

NEW APPEALS

No new appeals

COMMISSION CASES

No decisions received

CASES RELATED TO COMMISSION CASES/JURISDICTION

Kimberly Lock v. Rockaway Township Public Schools, 2019 N.J. Super. Unpub. LEXIS 2147 (Dkt. No. A-5541-17T3)

In an unpublished decision, the Appellate Division of the Superior Court affirms the decision of the Superior Court, Law Division that Lock, a tenured kindergarten teacher, failed to exhaust administrative remedies in challenging an increment withholding. The Board withheld the teacher's increment for making a brief video recording of an uncontrollable and disruptive student while he was acting out. Seeking advice, she showed the video to colleagues including a learning disabilities

instructor. She deleted it before it was seen by the principal and the parents of the child, who unbeknownst to the teacher, was on a "do not photograph" list. The teacher filed suit in Superior Court seeking to restore her increment, requesting back pay, purging all related documents from her personnel file and seeking punitive damages, court costs and attorney's fees. The trial court dismissed the suit based on the procedures contained in the education laws and the PERC Act pertaining to challenges to increment withholdings. In affirming the decision, the appellate court noted that after her suit was dismissed, the teacher filed a request to have PERC appoint an arbitrator to review the withholding.

OTHER CASES

Retaliation claim by police officer who supported losing mayoral candidate can proceed

Nieves-Hall v. City of Newark, 2019 U.S. Dist. LEXIS 165292 (D.N.J.)

A federal district court declines "for the most part" motions filed by the City and City police officials to dismiss a six-count lawsuit filed by a Newark police lieutenant with no disciplinary history, but with awards for service. The suit alleges on the job retaliation and harassment for her active support of an unsuccessful candidate for mayor and includes claims for violations of federal and state free speech guarantees, "whistle-blower" laws, the state's worker freedom from intimidation law, and intentional infliction of emotional distress.

Port Authority not required to breach CBA to accommodate religion

Miller v. Port Auth. of N.Y. & N.J., 2019 U.S. App. LEXIS 30521 (3rd Cir.) affirming 351 F. Supp. 3d 762 (D.N.J. 2018)

Miller, a terminated former utility systems maintainer for the Port Authority, brought suit under Title VII of the Civil Rights Act of 1964, alleging that the Port Authority failed to reasonably accommodate his religious practices of observing the Jewish Sabbath and other Jewish holidays. The District Court granted the Port Authority's motion for summary judgment, and Miller appealed. In an unpublished decision, the U.S. Court of Appeals for the Third Circuit, affirms the judgment of the District Court. The lower court ruling, digested in the December 2018 General Counsel report, held that the employer had made

reasonable accommodations for Miller's religious beliefs and was not required to contravene seniority provisions in the pertinent collective bargaining agreement as they pertained to the established rotational work schedule.

Sick leave pattern, refusal to do snow removal warranted firing

In the Matter of Claudio Tundo, 2019 N.J. Super. Unpub. LEXIS 2062 (App. Div. Dkt. No. A-0970-17T3)

In an unpublished decision, the Appellate Division of the Superior Court affirms the Civil Service Commission's (CSC) ruling sustaining the disciplinary discharge of a Borough of Ringwood public works employee. Over the last three years prior to his 2016 discharge, Tundo showed a pattern of using his sick leave on days adjacent to weekends and holidays and declined to provide doctor's notes. Although at one point his sick days taken showed a more normal pattern, he declined to report for work for snow removal duties and reported off sick two days during a major snowstorm when he had been assigned snow removal work. He had also declined to report snow removal work on two prior occasions. He had disciplinary suspensions of four, seven and 15 days, the last of which culminated in his termination.

Tenured professor fired for hiding scope of outside employment and working second position while on disability leave

In the Matter of Dr. Allison Kellish, Union County College, 2019 N.J. Super. Unpub. LEXIS 2082 (App. Div. Dkt. No. A-1445-18T1)

In an unpublished decision, the Appellate Division of the Superior Court affirms the decision of Union County College's (UCC) Board of Trustees to terminate the employment of Kellish, a tenured professor of Health Sciences employed by UCC since 2000. From 2010 through 2015, Kellish, also taught a two-credit clinical course at Seton Hall University (SHU) of which UCC was aware. A new collective negotiations agreement covering UCC faculty, was ratified in June 2015. While the prior agreement required faculty to "notify the [p]resident, in writing of (outside) activity, indicating employer, specific days and hours of the assignment and overall duration[,]" the new agreement required that any employee seeking or maintaining outside employment "receive pre-approval from the [p]resident before engaging in such outside employment."

In August, 2015 Kellish notified UCC's President that she would be continuing to teach at SHU in the same manner as in the past. However, in July, 2015, SHU dramatically expanded Kellish's responsibilities, elevating her to the position of Director of Clinical Education for its physical therapy department. SHU appointed Kellish to a "full-time" three-year term, at an annual salary of \$103,000. Kellish did not advise UCC of this change either in 2015 or in 2016. Kellish also worked at SHU while on disability leave from UCC.