



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

PO Box 429  
TRENTON, NEW JERSEY 08625-0429

[www.state.nj.us/perc](http://www.state.nj.us/perc)

ADMINISTRATION/LEGAL  
(609) 292-9830

CONCILIATION/ARBITRATION  
(609) 292-9898

UNFAIR PRACTICE/REPRESENTATION  
(609) 292-6780

*For Courier Delivery*  
495 WEST STATE STREET  
TRENTON, NEW JERSEY 08618

FAX: (609) 777-0089  
EMAIL: [mail@perc.state.nj.us](mailto:mail@perc.state.nj.us)

May 21, 2020

TO: Commissioners  
FROM: Counsel Staff  
RE: Developments in the Counsel's Office since April 22,  
2020

**Commission Cases**

**Court Decisions**

William Toolen, et al. v. The State of New Jersey and Philip D. Murphy, A-3409-17T1/A-3484-17T1

The Appellate Division of the Superior Court, in an unpublished opinion, dismisses as moot consolidated appeals from the Commission's January (P.E.R.C. No. 2018-29) and February (P.E.R.C. No. 2018-36) 2018 decisions, rejecting, and then denying reconsideration of, claims filed by two state law enforcement unions. Their lawsuit, first filed in Mercer County Superior Court and then transferred to the Commission, asserted that state statutes, enacted before the 1968 creation of the Commission mandated the payment of salary increments during the hiatus between the expiration of a collective negotiations agreement and the consummation of a new contract. The Court,

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agreeing with the Commission, noted that the Supreme Court in In re County of Atlantic, 230 N.J. 237 (2017), held that increment payments during the hiatus was a mandatorily negotiable term and condition of employment. The Court determines the cases are moot because the State and the Unions had entered into successor CNAs that had provided for the retroactive payment of increments. The decision is attached.

### **New Appeals**

#### Southampton Tp Bd of Ed and Southampton Tp EA, I.R. No. 2020-19

The Association is seeking leave to appeal from a denial of its request for interim relief in an unfair practice case involving the adoption of a school calendar setting the first two teacher work/in-service days during the week prior to Labor Day.

#### Boro of Bergenfield and PBA Local 309, P.E.R.C. No. 2020-5

The Borough has appealed the Commission's determination that it engaged in an unfair practice when it refused to sign a collective negotiations agreement. The document memorialized and incorporated the terms of an interest arbitration award that resolved a collective negotiations impasse between the Borough and the PBA. The Borough is seeking a stay of the Commission's order and the PBA is asking that enforcement proceedings be initiated.

#### Rutgers Univ and AAUP - Biomedical and Health Sciences of NJ and Gaetano G Spinnato, P.E.R.C. No. 2020-44

Mr. Spinnato filed unfair practice charges against Rutgers concerning a compensatory time dispute and against the AAUP asserting that it interfered with his right to revoke his union membership. He has appealed from the Commission's refusal to issue a complaint on his allegations.

#### Officer Gregory Digiuglielmo and NJIT, Agency Dkt. No. DA-2020-004

NJIT seeks leave to appeal the Director of Arbitration's determination that the officer's appeal of his discipline qualifies for special disciplinary arbitration under N.J.S.A. 40A:14-209 through 211.

### Other Cases

Correction Officer who married parolee removed from position

In re Atkins, 2020 N.J. Super. Unpub. LEXIS 781 (App. Div. Dkt. No. A-2346-18T3)

In an unpublished opinion, the Appellate Division of the Superior Court affirms the decision of the Civil Service Commission (CSC) dismissing Atkins as a senior correctional officer after an investigation determined that she violated numerous DOC policies including conduct unbecoming a public employee and undue familiarity with a parolee. While incarcerated, the parolee was at Trenton State Prison where Atkins was assigned. Following his release the parolee and Atkins developed a romantic relationship and were married. Thereafter he was re-incarcerated for violating his parole. Atkins corresponded with him and sent him money.

CSC could reduce correction officer's firing to 120 day suspension

In the Matter of William Shorter, 2020 N.J. Super. Unpub. LEXIS 821 (App. Div. Dkt. No. A-3150-18T3)

In an unpublished opinion, the Appellate Division of the Superior Court affirms the decision of the Civil Service Commission (CSC) to reduce from discharge to a 120-day suspension the penalty imposed on a decorated corrections sergeant who had tested positive for cannabis use. The positive test stemmed from the officer's use, on a physician's recommendation, of a product he took for pain relief for an arthritic back. The physician assured the officer that using the product would not produce a positive test, relying on information he had received from the manufacturer.

Second positive drug test warranted firing even though employee sought treatment

In re Mason, 2020 N.J. Super. Unpub. LEXIS 917 (App. Div. Dkt. No. A-6033-17T3)

In an unpublished opinion, the Appellate Division of the Superior Court affirms the decision of the Civil Service Commission (CSC) to discharge a Medical Security Officer employed at the Ann Klein Forensic Center for a second positive drug test. Before Mason was employed the Center adopted a drug policy that included

having offenders treated through an independent Employee Advisory Service (EAS) but thereafter required three random screenings when the employee returned to work. After testing positive for cocaine, Mason was referred to the EAS, completed the program and returned to work. A second random test was positive for cocaine, but on the day before the result was known Mason sought to participate in the EAS again. The appeals court holds that Mason's use of cocaine for a second time warranted his termination.