



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

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June 17, 2020

TO: Commissioners
FROM: Counsel Staff
RE: Developments in the Counsel's Office since May 21, 2020

Commission Cases

Update on Federal Court Litigation involving the Commission

The Chairman and several current and former members of the Commission were named as defendants in two federal lawsuits that were filed after public sector agency shop arrangements were declared unconstitutional in Janus v AFSCME, 138 S.Ct. 2448 (2018).

In both cases, Smith, et al. v. NJEA, et al., 2019 U.S. Dist. LEXIS 205960 and Thulen v. AFSCME, 2019 U.S. Dist. LEXIS 221502 Judge Renee M. Bumb granted motions dismissing the PERC defendants from the litigation. Those rulings and other related cases are now pending before the United States Court of Appeals for the Third Circuit. During the past month the Counsel's office has filed briefs in Smith and Thulen urging the District

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Court's orders be affirmed. Smith has been consolidated with Fischer et al. v NJEA et al., but the Chairman and members of the Commission are not defendants in that case. The Court of Appeals has denied a motion to consolidate Smith and Fischer with a Pennsylvania federal court decision.

Orders and Decisions

Interlocutory appeals

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

The Appellate Division of the Superior Court has denied (Docket No. AM-477-19) the Association's motion for leave to appeal from the 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.

Officer Gregory DiGuglielmo and New Jersey Institute of Technology, Dkt. No. DA-2020-004.

NJIT has been granted leave to appeal (AM-472-19) from 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. The Court's order (M-6336-19), stays the arbitration proceedings pending appeal and invites the Attorney General to participate in the appeal.

Final Decisions

Ordinance ending terminal leave at contract expiration was an unfair practice

In the Matter of City of Orange Township and PBA Local 89, 2020 N.J. Super. Unpub. LEXIS 1047 (App. Div. Dkt No. A-4310-18T3)

The Appellate Division of the Superior Court, in an unpublished opinion (attached), affirms the Commission's decision (P.E.R.C. No. 2019-40) holding that the City of Orange Township engaged in unfair practices when it adopted an ordinance announcing the elimination of terminal leave payments to PBA unit members on December 31, 2020 or at the expiration of the parties' current agreement. Referring to cases recognizing the Commission's administrative expertise, the Court holds that the Hearing Examiner and the agency accurately construed the ordinance as conflicting with the statutory proscription against making unilateral changes in working conditions.

Starting teacher work year ahead of Labor Day had to be negotiated

In the Matter of the Southampton Township Board of Education and Southampton Township Education Association, 2020 N.J. Super. Unpub. LEXIS ____ 1020 (App. Div. Dkt No. A-4316-18T2)

The Appellate Division of the Superior Court, in an unpublished opinion (attached) has affirmed the Commission's decision (P.E.R.C. No. 2019-41) holding that the Southampton Township Board of Education engaged in unfair practices when it adopted, without prior negotiations with the Southampton Township Education Association, a calendar for the 2018-2019 school year that contained two faculty work days prior to the Labor Day weekend, which was a departure from the prior school and work year. The Commission held that the Board had not articulated any educational policy reason for the schedule change and the appeals court affirmed. The Court dismissed the Association's cross-appeal from language in the Commission's opinion noting that there could be circumstances that would allow the Board to start the faculty work year in August.

Paid family leave not available to Trooper for birth of child by fiancée

In the State of New Jersey, State Police and State Troopers Fraternal Association, 2020 N.J. Super. Unpub. LEXIS 973 (App. Div. Dkt No. A-4107-18T3)

The Appellate Division of the Superior Court, in an unpublished opinion (attached) has affirmed the Commission's decision (P.E.R.C. No. 2019-30) restraining arbitration filed by the STFA on behalf of a Trooper who sought 12 weeks of paid family leave to care for a newborn child and his fiancée the child's mother. STFA also appealed the denial of reconsideration (P.E.R.C. No. 2019-43) of the agency's ruling. The State Police allowed him six weeks of paid leave, to be charged against his available vacation and disability leave, but told the Trooper that the remaining six weeks would be without pay. The Court agreed with the Commission that the request for 12 weeks of paid leave was preempted by the existing provisions of the state Family Leave Act (FLA) and the federal Family Medical Leave Act (FMLA) and that, at the time the case was before PERC, a fiancée did not come within the definition of "immediate family member" under civil service regulations. The Court noted that a subsequent broadening of the definition might include "fiancée" in that class of close family members. However, it held there were no grounds for applying the change retroactively.