



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

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October 7, 2020

TO: Commissioners
FROM: Counsel Staff
RE: Developments in Counsel's Office since September 17,
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 federal lawsuits that were filed after public sector agency shop arrangements were declared unconstitutional in Janus v AFSCME, 138 S.Ct. 2448 (2018).

In the Smith and Thulen matters, Judge Renee M. Bumb granted motions dismissing the PERC defendants from the litigation. Both cases are now pending before the United States Court of Appeals for the Third Circuit. Oral argument was held in Thulen on September 22, 2020 and in Smith on September 30, 2020. The Commission relied on briefs filed asserting affirmance of the District Court's orders.

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Appeals from Commission Decisions

There were no new appeals filed since September 17.

Oral argument before the Supreme Court of New Jersey is scheduled for October 13, 2020 in Moshe Rozenblit, et al. v. Marcia V. Lyles, et al., 461 N.J. Super. 20, 2019 N.J. Super. LEXIS 132 (App. Div.), reversing 2017 N.J. Super. Unpub. LEXIS 3202 (Ch. Div.) In that case, the Appellate Division of the Superior Court reversed a trial court decision and held that granting two Jersey City Education Association officers fully paid union leave with benefits (paid release time) is not permissible under N.J.S.A. 18A:30-7. 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. On January 31, 2020, the Supreme Court granted certification on the question of whether a collective bargaining agreement's release-time provision violated public policy, statutory authority (N.J.S.A. 18A:30-7), and/or the State Constitution (N.J. Const. art. VIII, § 3, ¶¶ 2-3). General Counsel filed an amicus brief, arguing: (1) the appellate panel made a scope of negotiations determination without applying the correct test; (2) N.J.S.A. 18A:30-7 affords the Board discretion on the subject of non-sick paid leave; (3) union release time has been found to be mandatorily negotiable; and that therefore the judgment of the appellate court should be reversed, or the matter should be remanded to PERC for a scope of negotiations determination.

In In the Matter of New Jersey Institute of Technology (NJIT), Officer Gregory DiGuglielmo and Public Employment Relations Commission (App. Div. Dkt No. A-003772-19T2), oral argument was held on September 29, 2020, in NJIT's appeal from the Director's determination (DA-2020-004) that Mr. DiGuglielmo is eligible for special disciplinary arbitration to review his disciplinary termination as a college campus police officer, pursuant to N.J.S.A. 40A:14-210.

Oral argument is scheduled for October 26, 2020 in the Port Authority of New York and New Jersey's appeal from a decision of the Superior Court, Law Division, Hudson County (Dkt. No. HUD-L-2723-18) affirming an improper practices ruling of the Port Authority Employment Relations Panel (PAERP) based on a charge filed by the Port Authority Police Benevolent Association. The charge alleged the Port Authority failed to provide "fire-safe" uniforms as required by the parties contract. The Commission's General Counsel represents the PAERP when its decisions are challenged in New Jersey Courts.

Commission Court Decisions

No new opinions on appeals from Commission decisions were issued since September 17.

Non-Commission Court Decisions Related to the Commission's Jurisdiction

Appellate Division overturns trial court's vacation of PERC arbitrator's award on dental benefit contributions, finding award was not contrary to law and was reasonably debatable

Atlantic City Board of Education v. Atlantic City Education Association, 2020 N.J. Super. Unpub. LEXIS 1714 (App. Div. Dkt No. A-0370-19T3)

The Appellate Division of the Superior Court, in an unpublished opinion, reverses the Law Division's vacation of a PERC-appointed grievance arbitrator's award. The arbitrator determined the Atlantic City Board of Education violated its collective negotiations agreement (CNA) with the Atlantic City Education Association when the Board imposed new dental insurance deductions on members, where the express terms of the CNA did not require such deductions, there was no related past practice, and no applicable law, including P.L. 2011, c.78 (Chapter 78) required them; and ordered the Board to cease such deductions and reimburse affected employees. The Appellate Division, overturning the trial court's ruling that the award was contrary to public policy and not reasonably debatable, found that Chapter 78 excludes, from the definition of cost of medical coverage to which employees must contribute pursuant to Chapter 78, charges for dental care under the School Employees Health Benefits Program. Thus, the Appellate Division found, employee contributions to dental insurance premiums is subject to negotiation and agreement. Given that the Board produced no substantive evidence that the parties engaged in such negotiations, and that the Board also drafted the relevant CNA, the Court concluded that neither the CNA as written nor the arbitration award violated public policy.

Appellate Division vacates final agency decision of CSC on conduct-unbecoming disciplinary charges against police officer, and remands for ALJ to make findings of fact and conclusions of law separate from those reached by Law Division judge in related criminal matter

In re Smith, 2020 N.J. Super. Unpub. LEXIS 1861 (App. Div. Dkt No. A-2987-18T2)

The Appellate Division of the Superior Court, in an unpublished

opinion, vacates a final agency decision of the Civil Service Commission (CSC), wherein the CSC adopted findings of fact in the recommended decision of administrative law judge (ALJ) that, in turn, applied the doctrine of collateral estoppel to adopt facts adduced at a criminal trial on reckless driving charges against same officer, arising from the same incident. The Appellate Division found the ALJ erred in applying collateral estoppel where the trial judge in the criminal matter did not decide the issue of conduct-unbecoming, and the ALJ made no independent findings of fact on that issue. The Court remanded to the CSC for the ALJ to determine whether the officer's reckless driving constituted conduct unbecoming of an officer and other sufficient cause to warrant discipline, without reliance upon the criminal trial judge's fact-findings.