



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

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November 5, 2020

TO: Commissioners
FROM: Counsel Staff
RE: Developments in Counsel's Office since October 15, 2020

Commission Cases

Appeals from Commission Decisions

There were no new appeals filed since October 15.

Oral argument was held on 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.

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In In the Matter of County of Essex and Essex County PBA Local 382 (App. Div. Dkt. No. A-3458-19T4), the court granted respective motions of PBA Local 183 and 183A, and FOP Lodge 106, to intervene in Essex County's appeal from the Commission's final agency decision (P.E.R.C. No. 2020-40, 46 NJPER 359 (¶88 2020)) that granted in part, and denied in part, the County's request for a restraint of binding arbitration of PBA Local 382's grievance challenging the County's unilateral change of medical insurance carriers that allegedly reduced the level of health benefits.

In In the Matter of Rutgers University Police Department and Leslie Jones (App. Div. Dkt No. A-002286-19T3), the court directed the parties to brief the issue of the impact of the DiGuglielmo decision (see below) on Mr. Jones' appeal from the Director of Arbitration's determination (DA-2020-002) that he is ineligible for special disciplinary arbitration.

Commission Court Decisions

Appellate Division affirms in part, and reverses in part, PERC's determination on eligibility for special disciplinary arbitration (SDA), finding college campus police force was a "law enforcement agency" but its officers are SDA-ineligible because not employed by a non-Civil Service municipal police department

In the Matter of New Jersey Institute of Technology (NJIT), Officer Gregory DiGuglielmo and Public Employment Relations Commission, 2020 N.J. Super. LEXIS 219 (App. Div. Dkt No. A-003772-19T2)

The Appellate Division of the Superior Court, in a published opinion (attached), affirmed in part, and reversed in part, the Director of Arbitration's final agency determination (DA-2020-004) that Mr. DiGuglielmo was eligible for special disciplinary arbitration (SDA) of NJIT's disciplinary termination of his employment as a college campus police officer, pursuant to N.J.S.A. 40A:14-210. The Appellate Division held: (1) the NJIT police force is "law enforcement agency" as defined by N.J.S.A. 40A:14-200; but (2) NJIT officers are ineligible for SDA because N.J.S.A. 40A:14-150 restricts that option to officers who work for non-Civil Service municipal police departments.

Appellate Division affirms PERC's final agency decision holding that two provisions in a CNA were mandatorily negotiable

Ocean County College v. Ocean County College Faculty Association 2020 N.J. Super. Unpub. LEXIS 1998 (App. Div. Dkt No. A-0446-19T2)

The Appellate Division of the Superior Court, in an unpublished opinion (attached), affirmed PERC's final agency decision (SN-2019-034) denying reconsideration of its conclusion that two provisions in a collective negotiations agreement (CNA) between Ocean County College and the Ocean County College Faculty Association were mandatorily negotiable. Specifically, the Court found the disputed clauses did not interfere with managerial authority because they preserved management's interest in ensuring that appointments are made to those who are qualified to perform the job, with respect to provisions which (1) preserved work traditionally performed by qualified unit employees within their discipline; and (2) accorded extra pay assignment priority to association members over non-members when both are equally qualified.

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

Member who joined union voluntarily not entitled to post-Janus reimbursement of union dues

Oliver v. Service Employees International Union Local 668, 2020 U.S. App. LEXIS 31805 (Dkt No. 19-3876)

The United States Court of Appeals for the Third Circuit, in an unpublished opinion, affirms the District Court's summary dismissal of the plaintiff's claim that she was entitled to a refund of union membership dues following the decision of the Supreme Court of the United States in Janus v. AFSCME, 138 S. Ct. 2448, 2486 (2018), which held that requiring public employees to subsidize a union they chose not to join violated their free speech and free association rights. The Third Circuit found that those rights were not violated here because plaintiff's membership was voluntary in that she chose to join the union when she was not compelled to do so; thus, she was not entitled to a refund of membership dues.

Appellate Division affirms Civil Service Commission's final agency decision reinstating a firefighter for wrongful termination, where firefighter's alteration of residency document with truthful information did not did not indicate lack of character or morals to be a firefighter

In re D'Amico, City of Plainfield Fire Department, 2020 N.J. Super. Unpub. LEXIS 1992 (App. Div. Dkt No.A-4576-18T3)

The Appellate Division of the Superior Court, in an unpublished opinion, affirms a final agency decision of the Civil Service Commission (CSC) adopting an initial determination by an administrative law judge finding Mr. D'Amico was wrongfully terminated from his employment as a City of Plainfield firefighter and reinstating D'Amico to his job position. The CSC found that Mr. D'Amico's alteration of a residency card with the addition of correct information did not indicate a lack of character or morals to be a firefighter, and that even if it did, the City was aware of the altered document before Mr. D'Amico was hired and attended the fire academy. The Court found the CSC rendered findings of fact and conclusions of law firmly grounded in the evidence presented, and its determinations were supported by substantial credible evidence in the record and were neither arbitrary, capricious, or unreasonable.