



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

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February 17, 2021

TO: Commissioners  
FROM: Counsel Staff  
RE: Developments in Counsel's Office since January 28, 2021

**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 Thulen v. AFSCME, 2021 U.S. App. LEXIS 3679, the United States Court of Appeals for the Third Circuit, in a not-precedential decision (attached), affirmed the District Court's order dismissing the case. The plaintiffs, building inspectors employed by the Township of Lakewood, raised First Amendment challenges to provisions in the New Jersey Workplace Democracy Enhancement Act (WDEA) that prohibited them from revoking their dues authorizations outside a ten-day window. The Court of Appeals found that the plaintiffs (1) lacked standing to seek prospective relief because they are not currently AFSCME members; and (2) lacked standing to seek monetary damages because the complaint (a) did not properly request it, and (b) did not allege a past injury arising from the WDEA. The Court further noted that any claims of damages against the defendant New Jersey officials in their official capacity are barred by the Eleventh Amendment.

## **Appeals from Commission Decisions**

There were no new appeals filed since January 28.

Oral argument is scheduled for February 22, 2021, in In the Matter of Borough of Carteret and FMBA Local 67 (App. Div. Dkt. No. A-1845-19), in which the Borough appeals from a final Commission decision, SN-2019-043, declining to restrain binding arbitration of a grievance contesting the Borough's refusal to re-assign probationary firefighters from a daytime, weekly work schedule to 24-hour shifts following the completion of their training at the Fire Academy.

## **Commission Court Decisions**

Board of education's negotiated agreement to pay salaries and benefits to two teachers to work full-time on education association's business did not exceed board's statutory grant of authority and did not offend State Constitution

Rozenblit v. Lyles, 2021 N.J. LEXIS 123 (Sup. Ct. Dkt No. A-41/42)

The Supreme Court of New Jersey (opinion attached) reversed the judgment of the Appellate Division and reinstated the trial court's order dismissing plaintiffs' statutory and constitutional challenges to provisions in a collective negotiations agreement (CNA) between the Jersey City School District (District) and the Jersey City Education Association (Association) that authorized two District teachers, or "releasees," to work full-time on the Association's business, a practice known as "release time." PERC's role was as an amicus rather than as a party in this matter. General Counsel argued that the judgment of the appellate court should be reversed, or the matter should be remanded to PERC for a scope of negotiations determination. The Court held that (1) the school board's payment of salaries and benefits to the releasees did not exceed its statutory grant of authority because the release time provisions are authorized by the plain language of N.J.S.A. 18A:30-7, construed in conjunction with two related education statutes, N.J.S.A. 18A:27-4 and N.J.S.A. 18A:11-1(c), and with a core provision of the Employer-Employee Relations Act (EERA), N.J.S.A. 34:13A-2; and (2) the release time serves a public purpose and is so consonant with the accomplishment of that purpose that it does not offend the Gift Clause of the State Constitution.

Commission did not arbitrarily, capriciously or unreasonably dismiss union's petitions for clarification of unit and unfair practice charges related to city's merger of two public works departments

Jersey City Public School Employees, Inc., Local 245 v. City of Jersey City & New Jersey Public Employment Relations Commission, 2021 N.J. Super. Unpub. LEXIS 205 (App. Div. Dkt No. A-1823-19T4)

The New Jersey Superior Court, Appellate Division, in an unpublished decision (attached), affirmed a final Commission decision, P.E.R.C. No. 2020-24, dismissing Local 245's petitions for a clarification of unit and related unfair practice charges. The petitions concerned the City's decision to dissolve the Jersey City Incinerator Authority (Authority) and merge it into the Department of Public Works (Department); pursuant to which the City entered into a memorandum of agreement recognizing International Brotherhood of Teamsters Union, Local 641, as the exclusive representative of the Authority's blue collar workers who had been transferred to the Department. The Court affirmed substantially for the reasons set forth by the Commission, finding nothing arbitrary, capricious or unreasonable in its determinations that (1) the City's agreement with Local 245 excluded employees represented in other bargaining units, including Local 641; (2) no changed circumstances necessitated a unit clarification because none of the effected employees' job functions changed with the merger of the Authority into the Department; and (3) these separate units had existed for years and were stable, so there was no reason for the Commission to intervene in their dispute. The Court added that Local 245 failed to dispute any of the relevant facts.

College campus police officer ineligible for special disciplinary arbitration to review termination of his employment by Rutgers University because he was not a "municipal" police officer and was not suspended without pay

In the Matter of Rutgers University Police Department and Leslie Jones, 2021 N.J. Super. Unpub. LEXIS 203 (App. Div. Dkt No. A-002286-19T3)

The New Jersey Superior Court, Appellate Division, in an unpublished decision (attached), affirmed a final agency decision by the Director of Arbitration, DA-2020-002, declining to process Jones' request to appoint a special disciplinary arbitrator, pursuant to N.J.S.A. 40A:14-210, to review the disciplinary termination of his employment as a Rutgers campus police officer. Relying on the DiGuglielmo decision, 465 N.J. Super. 42 (App.

Div. 2020), the Court found Jones was not eligible because he was not a "municipal" police officer within the ambit of N.J.S.A. 40A:14-150, and because he was not suspended without pay prior to his termination. The Court declined to reach the issue of whether Jones was also ineligible because the conduct for which was removed "related to" criminal conduct.

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

No new non-Commission court decisions related to the Commission's jurisdiction were issued since January 28.