



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)

October 27, 2005

MEMORANDUM

TO: Commissioners

FROM: Robert E. Anderson  
General Counsel

SUBJECT: Supplemental Report on Developments in the Counsel's Office Since September 29, 2005

Commission Cases

An Appellate Division panel has affirmed in part and reversed in part the Commission's decision in Rutgers, The State Univ. and Rutgers Council of AAUP Chapters, P.E.R.C. No. 2004-64, 30 NJPER 109 (¶44 2004), aff'd in part and rev'd in part, \_\_\_ N.J. Super. \_\_\_ (App. Div. 2005) (copy attached). In this case, the Commission held that several aspects of Rutgers' patent policy were mandatorily negotiable and several other aspects were not mandatorily negotiable. Rutgers appealed the aspects of the policy that were held to be negotiable. The AAUP did not cross appeal.

The Court agreed with the Commission that it was appropriate to analyze individual aspects of the policy separately rather than to hold that the entire policy was either negotiable or non-negotiable. The Court rejected Rutgers' argument that City of Jersey City v. Jersey City POBA, 154 N.J. 555 (1998), required the latter approach. The Court also held that Rutgers must negotiate over the terms of assignments of patents from teachers to the University; those terms may significantly impact compensation for work performed.

However, the Court reversed the Commission's rulings on two other issues. This partial reversal was the first time a Commission decision has been reversed, either in whole or in part, in over two years.

The first ruling was on the unilaterally-imposed provision stating that laboratory notebooks and research materials are the University's property. The Commission held that this provision was mandatorily negotiable to the extent it applied to notebooks and research materials unrelated to patent applications. The Commission's decision held that Rutgers did not have to negotiate to the extent that it needed these documents to apply for and protect its patent rights. The Court's opinion appears to have missed that distinction; it characterizes Rutgers' interest as "maintaining the integrity of the books for purposes of pursuing patent applications," the very interest protected by PERC's ruling. The Court accepted a stipulation from Rutgers' counsel at oral argument that employees could keep copies of the information in their notebooks and concluded that the University's assertion of ownership would not impede the employees' ability to publish the results of their research, an interest cited by the Commission in determining that the property issue was negotiable.

The Commission also ruled that Rutgers was required to negotiate over the policy provision requiring "prompt" disclosure to the University of an invention or discovery. The Commission concluded that negotiations over what constitutes a "prompt" disclosure would not significantly interfere with the patent program, but the Court agreed with Rutgers' assertion "that the subject does not permit a more precise formulation" and added that "the question whether an individual has made prompt disclosure can also only be answered on a case-by-case basis, considering the entire context in which the question arises." The Court found essentially that negotiations on this issue would be pointless, not that negotiations would significantly interfere with any prerogative.

### Other Cases

An Appellate Division panel (Judges A. A. Rodriguez, C. S. Fisher, and Yannotti) has held that two grievances contesting mid-year terminations of school board employees were not contractually arbitrable.

In Pascack Valley Reg. H.S. Bd. of Ed. v. Pascack Valley Reg. Support Staff Ass'n, App. Div. Dkt. No. A-2599-04T5 (10/25/05) (copy attached), the Court affirmed a trial court decision vacating an arbitration award. The arbitrator held that the Board had just cause to discipline a custodian for bigoted remarks to another custodian, but not to discharge him. The arbitrator modified the discharge to an unpaid suspension of 60 days. The trial court vacated the award on the grounds that the custodian's individual employment contract permitted the Board to terminate him on 15 days' notice and that the just cause provision of the collective negotiations agreement did not apply at all since the employee had been terminated on notice rather than discharged. The Court reasoned that just cause clauses do not ordinarily apply to any mid-year discharges where a board gives the notice required by an individual employment contract. Instead, citing Commissioner of Education cases allowing terminations on notice, the Court puts the burden on unions to negotiate for specific provisions requiring the Board to establish just cause to terminate individual employment contracts. The Court found no conflict between the individual contract and the collective bargaining agreement which provided that "[a]ny dismissal or suspension shall

be considered a disciplinary action . . . subject to the Grievance Procedure.” Finally, the Court held that N.J.S.A. 34:13A-29(a) – making disciplinary disputes subject to binding arbitration – did not apply since the termination of an employment agreement on notice is not a form of discipline but rather the exercise of a “clearly enunciated contractual right” under the individual employment agreement.

In a companion case, Northvale Bd. of Ed. v. Northvale Ed. Ass’n, App. Div. Dkt. No. A-2778-04T2 (10/25/05) (copy attached), the same panel enjoined arbitration of a grievance challenging the mid-year termination of a teacher. The Court held that the individual employment contract entitled the Board to terminate the teacher on 60 days’ notice and made inapplicable the just cause provision of the collective negotiations agreement subjecting allegedly unjust discharges to the grievance procedure. The Court’s reasoning tracks its reasoning in Pascack.

REA:aat  
Attachment