



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

PO Box 429
TRENTON, NEW JERSEY 08625-0429

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

March 19, 2014

MEMORANDUM

TO: Commissioners
FROM: Counsel Staff
SUBJECT: Report on Developments in the Counsel's Office Since February 20, 2014

Appellate Division Appeals

New Appeals

State of New Jersey and NJ Division of Criminal Justice, Non-Commissioned Officers Association, Superior Officers Association and FOP Lodge No. 91, P.E.R.C. No. 2014-50, ___ NJPER ___ (¶__ 2014).

Three unions (NJDCJ/NCOA, NJDCJ SOA and FOP Lodge #91) representing law enforcement officers employed by the Division of Criminal Justice have appealed a scope of negotiations decision ruling on the negotiability of contract language proposed for inclusion in first contracts between the unions and the State of New Jersey.

Probation Association of New Jersey and Peter Tortoreto and Robyn Ghee, P.E.R.C. No. 2014-31, 40 NJPER 254 (¶97 2013).

The charging parties, Tortoreto and Ghee, have appealed the Commission's dismissal of their unfair practice charge alleging that their union, the Probation Association of New Jersey violated the duty of fair representation by bringing union disciplinary charges against them.

Paterson SOS District and Paterson Education Association, P.E.R.C. No. 2014-46, 40 NJPER ___ (¶122 2014)

The Education Association has appealed the Commission's dismissal of its unfair practice charge alleging that the District engaged in an unfair practice by failing to pay salary increments following the expiration of a two-year collective negotiations agreement.

Bethlehem Township Board of Education and Bethlehem Township Education Association, P.E.R.C. No. 2014-47, 40 NJPER ___ (¶123 2014)

The Education Association has appealed the Commission's dismissal of its unfair practice charge alleging that the Board engaged in an unfair practice by failing to negotiate with the Association before changing the 2011 to 2012 school calendar to start the teacher work year and the student school year prior to Labor Day.

Supreme Court Appeals

Burlington County Prosecutor's Office and PBA Local 320, P.E.R.C. No. 2012-61, 39 NJPER 20 (¶4 2012), rem'd 2013 N.J. Super. Unpub. LEXIS 1387, 40 NJPER 41 (¶17 2013), certif. den. 2014 N.J. LEXIS 209, ___ N.J. ___ (2014)

In June 2013, the Appellate Division of the Superior Court had remanded an interest arbitration award to the Commission after ruling that the arbitrator inappropriately relied on the County's ability to pay instead of focusing on the financial impact on the County as required by N.J.S.A. 34:13A-16(g)(6). The appeals court stated that the purpose of the remand was "to develop the record regarding the arbitrator's subsection 16(g) analysis consistent with this opinion. We leave this task to the discretion of PERC." The Prosecutor had pursued a complete vacation of the award and sought review by the Supreme Court. On February 25, 2014, its application was denied. An appeal from the Commission's decision (P.E.R.C. No. 2014-22) affirming the award after the arbitrator completed the remand, is being pursued by the Prosecutor.

Other Cases

Arbitration of grievances arising after contract expiration

Newark Public School District v. City Association of Supervisors and Administrators, et al., 2014 N.J. Super. Unpub. LEXIS 536

The final step of the grievance procedure in the contract between the Newark School District and CASA, the representative of administrative and supervisory employees, ends with a binding decision by a "Tripartite Panel," consisting of two partisan members and one neutral member "selected by mutual agreement between the two partisan panel members." Under the terms of the agreement, the partisan members "serve[d] for the duration of the contract[.]" and the "neutral member . . . s[at] as chairman for the duration of the contract."

The Appellate Division of the Superior Court affirms a trial court ruling denying the district's application for injunctive relief. The District argued that, with respect to grievances arising after the agreement expired, contract language left the panel without authority to rule on the grievances.

The Court concluded that the Panel's authority was broad enough to decide questions of substantive arbitrability, here whether it could resolve grievances arising after the contract expired. It further held that the District's position was not consistent with both the New Jersey Employer-Employee Act (PERA), N.J.S.A. 34:13A-1 to -30, and the School Employees Contract Resolution and Equity Act (SECREA), N.J.S.A. 34:13A-31 to -43 noting that a public employer may not change the terms of employment contained in a collective negotiations agreement even after its expiration and observing:

While we explicitly do not infringe upon the Panel's paramount right to decide the issue, the District's argument that there could be no arbitration after the expiration date . . . is not consonant with the express language of PERA and SECREA.

* * *

We conclude that under the express terms of the Agreement and applicable law, the Panel was authorized to decide what, if any, effect the expiration date had upon the arbitrability of the two grievances at issue.

Pre-disciplinary procedures; minor discipline, non-civil service police

David B. Burns v. Borough of Glassboro, 2014 N.J. Super. Unpub. LEXIS 484

The Appellate Division of the Superior Court holds that neither the federal constitution, nor the statute (N.J.S.A. 40A:14-147) governing the discipline of municipal police gives an officer a right to a **prior** hearing before a written reprimand is issued. Glassboro's policies have a three-step appeal procedure, ending with the Borough administrator that allows an officer to appeal a written reprimand. Burns, a Glassboro police officer, tried to galvanize community support to oppose his transfer from his school resource officer assignment at Glassboro High School which was coming to an end. The reprimand said Burn's actions lacked "sound judgment" and were an attempt to interfere with the Chief's right to make assignments. Both the trial court and the appellate court characterized the reprimand as minor discipline. However, the appellate court noted that the statute only required pre-disciplinary proceedings in cases where an officer is "suspended, removed, fined or reduced in rank from or in office, employment, or position." Written reprimands were not included. It also held that as the issuance of a written reprimand does not directly and immediately result in deprivation of any property or liberty interest, due process did not require any procedure before the reprimand was issued. The Court

noted that it was not faced with an issue as to what due process recourse an officer might have to contest the reprimand after the municipal appeal process was exhausted.

Scope of review by trial court, non-civil service police discipline

The Estate of Nicholas Dare v. Township of Hamilton, 2014 N.J. Super. Unpub. LEXIS 523

The Appellate Division of the Superior Court affirms a trial court decision upholding the six-day suspension of a non-civil service police officer, who died while his appeal was pending. Three separate and unrelated charges were upheld by a departmental hearing officer. The officer's argument that the charges were untimely was rejected. Dare sought *de novo* review in the Superior Court pursuant to N.J.S.A. 40A:14-150, but did not raise the untimeliness allegation in his complaint. The trial court reviewed and weighed the evidence, made findings of fact, and applied the applicable law. The discipline and the penalty was affirmed.

The appellate court rejected the timeliness argument because it had not been raised before the trial court. It then explained the function of a trial court reviewing discipline imposed on a non-civil service police officer.

When the Law Division undertakes review of a non-civil service municipality's conviction of a police officer on disciplinary charges, that court considers the matter "anew, afresh [and] for a second time." In doing so, the trial court does not apply an abuse of discretion standard but makes its own findings of fact. The trial court is called upon to "make reasonable conclusions based on a thorough review of the record," and may reverse, affirm, or modify a disciplinary conviction under its broad authority. Although a court conducting a *de novo* review must give due deference to the conclusions drawn by the original tribunal regarding credibility, those initial findings are not controlling. [citations omitted].