



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

May 21, 2014

MEMORANDUM

TO: Commissioners
FROM: Counsel Staff
SUBJECT: Report on Developments in the Counsel's Office Since April 22, 2014

Commission Cases

New Appeals

Belleville Ed. Ass'n. and Belleville School District, I.R. No. 2014-004, 40 NJPER ____ (¶ 2014) mot for lv to app. pend., App. Div. Dkt. No. AM-529-13.

The Belleville Education Association has sought review of the decision of a Commission designee denying its application for interim relief in an unfair practice case.

Township of Livingston and Superior Officers Association, Local No. 263, P.E.R.C. No. 2014-66, 40 NJPER (¶ 2014), app. pending.

The Superior Officers Association has appealed the Commission's decision restraining arbitration of a grievance challenging the Township's refusal to allow an officer on terminal leave to work extra duty assignments.

County of Morris, Morris County Sheriff's Office and PBA Local 298, P.E.R.C. No. 2014-69, 40 NJPER (¶ 2014), app. pending.

The County has appealed the Commission's decision affirming an interest arbitration award.

Cases related to Commission cases

In re Robert Ruffin, 2014 N.J. Super. Unpub. LEXIS 955

The Appellate Division of the Superior Court affirms a decision of the Civil Service Commission (CSC) adopting the recommendation of an Administrative Law Judge to dismiss for lack of jurisdiction, a “minor” (five-day) suspension issued to the President of an AFSCME local, employed at Ancora State Psychiatric Hospital.

Ruffin, President of an AFSCME local who worked at Ancora, appealed a 15-day disciplinary suspension he received to the CSC. An unfair practice charge was filed with the Public Employment Relations Commission (Commission) alleging that the discipline was imposed in retaliation for Ruffin’s protected activities. The Civil Service appeal and the unfair practice charge were consolidated for a single factual hearing before an Administrative Law Judge. However, before the hearing, the Department of Human Services reduced Ruffin’s punishment to a five-day suspension, a minor disciplinary sanction. The ALJ recommended that Ruffin’s civil service appeal be dismissed for lack of jurisdiction and noted that Ruffin was free to challenge the reduced suspension in accordance with a negotiated review procedure, as well as pursue the unfair practice. Ruffin asserted that the hearing before the ALJ should go forward.

Following the CSC ruling, the Commission asserted jurisdiction over the unfair practice charge and directed that a hearing be conducted, State of New Jersey Ancora Psychiatric Hospital and AFSCME Council 71, Local 2218, P.E.R.C. NO. 2012-70, 39 NJPER 52 (¶23 2012).

In the meantime, Ruffin appealed the CSC’s dismissal of his appeal to the Appellate Division. The Court held that the CSC ruling did not prejudice Ruffin because:

- His penalty was reduced;
- He is still able to challenge his minor discipline before a labor-management panel; and
- The unfair practice charge filed on his behalf will go forward.

Other Cases

Discipline: Lack of bad Intent, clean record and good performance warrants reduced penalty

In re Nicholas Manla, North Jersey Developmental Center, 2014 N.J. Super. Unpub. LEXIS 957

The Appellate Division of the Superior Court rejects the appeal of the Department of Human Services (DHS) asserting that the Civil Service Commission (CSC) should not have reduced the penalty DHS imposed on an employee at the DHS's North Jersey Developmental Center from termination to a 20 working-day suspension.

Manla had been employed for over four years as a Cottage Training Technician at the Center, which houses developmentally disabled adults. On July 30, 2010, one of the resident patients, became agitated and aggressive with his roommate in a hallway and started hitting him. Manla attempted to intervene by telling the patient to go back to his room. When he refused and continued to kick at everyone in the hallway, Manla attempted to escort the patient to his room. He was observed “side-kicking” the patient in the buttocks. An Administrative Law Judge noted that Manla and the patient had developed a rapport and found that the contact between Manla and the patient, while inappropriate, was more in the nature of horseplay. Considering Manla’s lack of prior discipline and superb evaluations, he recommended that the penalty be reduced. The CSC concurred.

Failure to Compensate for pre-shift time as possible contract and FLSA violations

Hughes v. Twp. of Franklin, 2014 U.S. Dist. LEXIS 50921

The United States District Court for New Jersey allows additional current and former Franklin law enforcement officers to have the option of joining a lawsuit asserting that the Township failed to compensate them for “pre-shift” work in violation of a collective negotiations agreement and the Fair Labor Standards Act. The officers seek civil damages, in addition to a declaratory judgment concerning the alleged "invalid, illegal[,] and unenforceable" nature of the Township’s "practices and policies." The potential additional plaintiffs are similarly situated officers during a three year period prior to the filing of the federal lawsuit.

Agency discretion re reconsidering previously withdrawn case

In the Matter of Jose Montalvo, City of Newark, 2014 N.J. Super. Unpub. LEXIS 1123

Montalvo appealed the 2006 actions of the City of Newark, first suspending him for 120 days and then terminating his employment as a police officer, to the Civil Service Commission (CSC). Prior to hearing, Montalvo withdrew his CSC appeal and instead filed a wrongful termination action in the United States District Court. He sought both monetary damages and reinstatement. In August 2011, a jury found that Newark wrongfully terminated him for retaliatory reasons, and awarded him \$700,000. But, Montalvo’s motion for reinstatement as a police officer was denied. A federal appeals court affirmed the verdict and the order denying reinstatement. While the federal appeal was pending, Montalvo petitioned the CSC to reconsider the administrative appeal withdrawn by the Board in 2008. In August 2012, the Commission issued its final decision under N.J.A.C. 4A:2-1.1(a)3 denying appellant's request as untimely because he filed it three years after the Board's 2008 decision.

The opinion discusses the authority of an administrative agency to reconsider a decision. It also recites that unless an issue of law is linked with an agency’s administrative expertise, a reviewing court owes little deference to an agency’s determination of a strictly legal issue.