



STATE OF NEW JERSEY
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June 19, 2014

MEMORANDUM

TO: Commissioners
FROM: Counsel Staff
SUBJECT: Report on Developments in the Counsel's Office Since May 21, 2014

Commission Cases

The Appellate Division of the Superior Court has denied the motion of the Belleville Education Association for leave to appeal from a decision denying interim relief in an unfair practice case, I.R. No. 2014-004, NJPER (¶ 2014).

Cases related to Commission Cases

Bergen County PBA Local 134 v. Donovan, 2014 N.J. Super. LEXIS 76, ___ N.J. Super. ___ (App. Div. 2014)

In County of Bergen, P.E.R.C. 2013-008, 39 NJPER 147 (¶45 2012), the Commission held, in an unfair practice case, that the County of Bergen and the County Executive were joint employers, together with the Bergen County Sheriff and that the County Executive should not have been prevented from participating in collective negotiations between the Sheriff and PBA Local 134, the representative of sheriff's officers. Shortly after the Commission's ruling, a trial court judge directed the County to implement the collective negotiations agreement arising from talks between the Sheriff and the PBA.

In an appeal from the trial court ruling, the Appellate Division of the Superior Court, in a published opinion, affirms the lower court decision and holds, contrary to the Commission's decision and prior rulings on the same issue, that the Sheriff is the sole employer of Sheriff's officers. The court further held that a court, rather than the Commission, was the appropriate

forum to adjudicate a dispute as to whether the county is bound by an existing employment condition. Before appellate briefs were filed and argument was heard, the appeals court refused to grant the Commission's application to participate in the case. The unfair practice charge remains pending before the Commission.

Other Cases

Grievance Arbitration

Glassboro Board of Education v. Glassboro Educational Support Professional Association, 2014 N.J. Super. Unpub. LEXIS 1375

The Appellate Division of the Superior Court affirms a trial court decision restraining arbitration of a grievance challenging the non-renewal of a custodian. The Board cited the custodian's alleged excessive absenteeism as the reason for its decision. The Court holds that unless the parties collective negotiations agreement so provides, arbitration of the non-renewal of the fixed term contract of a non-tenured employee is not permitted.

Sheriff's Officer Charles Rudolph v. County of Gloucester, et al., 2014 N.J. Super. Unpub. LEXIS 1328

The Appellate Division of the Superior Court affirms a trial court's dismissal of a lawsuit filed by a sheriff's officer contesting a two-day disciplinary suspension. Reviewing the collective bargaining agreement, the Court holds that the CBA allows minor disciplinary sanctions to be challenged through binding grievance arbitration and that was the appropriate forum for the dispute.

Englewood PBA/SOA Local 216 v. City of Englewood, 2014 N.J. Super. Unpub. LEXIS

The Appellate Division of the Superior Court affirms a trial court's dismissal of a lawsuit filed by the PBA/SOA holding that the claims made and the issues raised could have been addressed in a grievance arbitration decision denying a grievance filed by the police unions. Despite contract language providing that the City would pay for medical coverage for a retired officer and his/her spouse, the City had failed to seek reimbursement for medical coverage of dependents. The arbitrator rejected the claim that the City was bound by this practice given the clear language of the contract. The PBA/SOA amended their action to vacate the award to allege that retirees were entitled to the paid dependent coverage based on promissory estoppel. The Court ruled:

To the extent that the amended complaint represents a different spin on the same facts, the complaint must be dismissed because the PBA had a fair opportunity to raise all estoppel issues in the arbitration forum.

Fair Labor Standards Act–Overtime

Rosano v. Twp. of Teaneck, 2014 U.S. App. LEXIS 10727

The United States Court of Appeals for the Third Circuit affirms a lower court decision granting summary judgment to the Township and dismissing the claims of 88 current and former Teaneck police officers asserting violations of the overtime provisions of the Fair Labor Standards Act (FLSA), 29 U.S.C. § 201 et seq.

The FLSA requires employers to compensate employees at overtime rates for work in excess of 40 hours. However, there is an exemption for public safety employees because of their irregular work schedules, allowing the overtime cycle to be based on a work period of up to 28 days.

Based upon its reading of the collective bargaining agreement, its review of bargaining history and past practice, the Court holds that the officers failed to prove that they were entitled to compensation beyond base salary for “muster time” and time spent “donning and doffing” uniforms and other equipment. The Court holds that the officers bore the burden of proving their claims and that the employer qualified for the exemption based on the law enforcement officers work schedules without first issuing a notice or declaration of intent.

Wrongful Termination Claims

Jeffrey Thompson v. City of Newark, et al., 2014 N.J. Super. Unpub LEXIS 1219

The Appellate Division of the Superior Court reverses a trial court’s dismissal of a motion to enforce litigant’s rights filed by Thompson a former Newark police officer. Thompson and the City settled a wrongful termination suit. Thompson filed suit when the City did not carry out its obligations under the settlement. The appellate court holds that the lower court wrongly dismissed Thompson’s action to enforce the settlement. As part of its remand, it also directs the trial court to consider an award of attorneys fees against the City.

Kathleen Warrick v. Parsippany-Troy Hills Bd. of Ed., 2014 N.J. Super. Unpub. LEXIS 1331

Overturning the trial judge’s motion to set aside a liability ruling, the Appellate Division of the Superior Court allows the school district’s discharged Transportation Coordinator to pursue a “tortious interference with contract” claim against the politically-connected owner of a bus maintenance company which had been providing allegedly poor maintenance of the district’s buses, most of which failed safety inspections. The appeals court lets stand the trial court ruling that the plaintiff did not prove a violation of the Conscientious Employee Protection (“whistle-blower”) Act.

Age Discrimination

Selina Brown, et al. v. County of Passaic, et al., 2014 N.J. Super. Unpub. LEXIS 1313

The Appellate Division of the Superior Court upholds a jury verdict finding that the Passaic County Prosecutor engaged in age discrimination by terminating or forcing retirements of older investigators, while retaining less experienced and younger investigators. The investigators ranged in age from 42 to 64 and could not later return to their positions because statutes barred the plaintiffs from re-employment in any public law enforcement jobs because the maximum hiring age for those jobs was thirty-five or, in some limited circumstances, forty-five.

Public Records–Law firm bills to public employer

Nunnermacker v. City of Hackensack, 2014 N.J. Super. Unpub. LEXIS 1287

A trial court judge interprets the Open Public Records Act and rules:

1. Where requested public records (bills from the law firm representing the City) were not turned over until the requestor initiated a lawsuit, the lawsuit was the event prompting disclosure and entitled the requestor to attorneys fees.
2. Copying of 300 pages of bills from the City's law firm did not justify a proposed assessment of a "time and effort fee," based on the hourly rate of the City's law firm.
3. OPRA allows the public records "custodian" to impose a special time and effort service charge where statutory conditions are met. The law firm representing the City is not the "custodian" within the meaning of OPRA. Any special service charge assessed by the custodian may not include the cost of advice from the City's law firm. Such cost is borne by the Custodian/City, not by the requestor.
4. OPRA requires immediate access to " budgets, **bills, vouchers**, contracts, including collective negotiations agreements and individual employment contracts, and public Employee Salary and overtime information." No exception or different treatment is provided for bills from attorneys.