



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

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October 22, 2012

**MEMORANDUM**

**TO:** Commissioners  
**FROM:** Counsel Staff  
**SUBJECT:** Report on Developments in the Counsel's Office Since September 20, 2012

**Commission Cases**

**Court Decisions**

On October 19, the Appellate Division of the Superior Court affirmed the Commission's ruling in State of New Jersey Judiciary and Probation Association of New Jersey (PANJ), P.E.R.C. No. 2011-38, 36 NJPER 417 (¶161 2010), aff'd 2012 N.J. Super. Unpub. LEXIS \_\_\_\_\_. The Commission had granted the Judiciary's request to restrain arbitration of a grievance filed by PANJ in which it claimed the Judiciary violated its contractual obligation under the Compensation Plan for Judicial Employees in the Case-Related Professional Unit. The Commission ruled that the nature of the grievance involved a challenge to Judiciary staffing decisions, which is a non-negotiable management prerogative, and therefore "enforcement of the Compensation Plan must be sought in another forum." The Court's opinion notes that the Commission's statutory mandate is broad and reflects the Legislature's intent to confer upon the Commission "a high degree of confidence in the ability of PERC to use expertise and knowledge of circumstances and dynamics that are typical or unique to the realm of employer-employee relations in the public sector." It reiterates that the Commission's interpretation of the Act is entitled to substantial deference.

On October 1, the Appellate Division of the Superior Court affirmed County of Mercer, Mercer County Prosecutor and Prosecutor's Detectives and Investigators PBA Local 339; Prosecutor's SOA, P.E.R.C. No. 2012-15, NJPER (¶ 2012), aff'd 2012 N.J. Super. Unpub.

LEXIS 2220. The Court agreed with the Commission's decision to uphold an interest arbitration award covering two units of law enforcement officers employed by the Mercer County Prosecutor. The Prosecutor's appeal challenged the wage increases awarded by the arbitrator and his decision to have the new contract run for four years. The Court observed that the Commission concluded that the arbitrator had appropriately considered each statutory requirement, explained the weight given to it, and reached a reasonable overall determination that was adequately "supported by substantial evidence in the record." The court's opinion states that it "reviewed the County's arguments in light of the arbitrator's decision, the reasons given by PERC for its affirmance, the record on appeal, and the applicable law, we conclude that PERC's affirmance of the award was not 'clearly arbitrary or capricious.'"

### **New Appeals**

Commission decisions in these cases have been appealed

Cumberland County Prosecutor, P.E.R.C. No. 2012-66  
(Interest arbitration and scope of negotiations; appeal filed by the Prosecutor)

Ramsey Borough, P.E.R.C. 2013-6  
(Interest arbitration; appeal filed by the PBA)

Bergen County, P.E.R.C. 2013-8  
(unfair practice/interim relief; Intervener, Bergen County Sheriff, seeks leave to appeal)

Rahway, P.E.R.C. 2013-13  
(scope of negotiations/restraint of arbitration; appeal filed by the FMBA)

### **OTHER CASES**

Grievance Arbitration: Teacher work year

Ed. Ass'n. of Mt. Olive, v. Mt. Olive Bd. of Ed., 2012 N.J. Super. Unpub. LEXIS 2229

The Appellate Division of the Superior Court affirms a trial court decision that denied the Association's application to vacate an arbitration award denying an Association grievance. The arbitrator determined that the Board did not violate its agreement with the Association by specifying, in a calendar for the upcoming school year, that the last two school days of the academic year would be shortened days for students only. The arbitrator found that although the contract addressed the shortened school days, the language was ambiguous as to whether it applied to both students and teachers. However, it was undisputed that for the past 25 years, teachers had worked full days on those dates. The Court held that the arbitrator properly considered the past practice and denied the Association's belated contention to transfer the case to the Commission for a scope of negotiations ruling.