



**STATE OF NEW JERSEY
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February 20, 2013

MEMORANDUM

TO: Commissioners
FROM: Counsel Staff
SUBJECT: Report on Developments in the Counsel's Office Since January 31, 2013

Commission Cases

New Appeals

Appeals have been filed by public employers seeking review of these Commission decisions.

NJ Transit and ATU Division 822, P.E.R.C. No 2013-045 (allowing arbitration of grievance asserting employee facing discipline was improperly denied union representation).

City of Camden and Camden Organization of Police Superiors, P.E.R.C. No. 2013-049 (vacating and remanding interest arbitration award covering superior officers).

Cases Related to Commission Cases

Int'l Ass'n, of Fire Fighters Local 1197 v. Twp. of Edison, 2013 U.S. Dist. LEXIS 13130

Declining to exercise jurisdiction, the United States District Court dismisses a federal civil rights lawsuit filed by the IAFF challenging these actions taken by the Township or Township officials:

1. Reduction in staffing;
2. 1.5% healthcare contribution;
3. Use of civilians as fire prevention specialists;
4. Mayor's directive barring discussion of fire department issues with Township Council;
5. Use of civilian Emergency Medical Technicians ("EMTs");
6. Anti-union discrimination re verification of sick time;
7. More severe disciplinary sanctions for firefighters than other employees;
8. Low compensation, vis-a-vis police officers, for off-duty work at golf tournament.

Nearly all of these claims were also made in several state forums including grievance arbitrations, unfair practice charges before the Commission (Nos 2, 3, 5, and 6) and state court lawsuits. Some of the claims have been resolved while others remain pending. The Court rules, based on various procedural grounds, that as the issues should be, or were, litigated in the state forums, that the federal court should not exercise jurisdiction.

Other Cases

Interest Arbitration, Delaware River Port Authority police

FOP v. Delaware River Port Authority, 2013 U.S. Dist. LEXIS 19732

The U.S. District Court for the District of New Jersey holds that impasses over the terms of a successor contract for DRPA police can be resolved by binding interest arbitration. Prior cases involving employees of the DRPA, a bi-state agency with operations (e.g. bridges, high speed rail) in Pennsylvania and New Jersey, have held that if the laws of both states have “complementary and parallel” procedures, then the DRPA and its employees are subject to those rights and obligations. The DRPA argued that an enactment must expressly state that DRPA police may use binding arbitration. The Court holds:

[A] prior New Jersey state court case in which DRPA was ordered to participate in interest arbitration with its police union commands the same result because of issue preclusion in this case. The Court finds, as did the Third Circuit [Court of Appeals], that the prior New Jersey decision is entitled to preclusive effect and, as a result, the Court will not address the bi-state compact interpretation questions that the parties have raised.

Discipline: correction officer, authority to make settlement offer, appropriate penalty

In the Matter of Dominic Gliottone, Mercer County, 2013 N.J. Super. Unpub. LEXIS 257

While in prison for a parole violation and subsequently at a drug rehabilitation center, a female prisoner contacted and corresponded with a corrections officer who she had known (and

dated briefly) for six or seven years and had last seen three years before her parole violation incarceration. The officer did not disclose the prior relationship. He exchanged over 100 phone calls with her while she was at the drug facility and visited her there listing himself as either her “cousin” or “fiancée.”

In the course of a hearing before an administrative law judge, Gliottone’s attorney and a Deputy Attorney General worked out an oral agreement to settle the disciplinary charges providing that the officer would serve a six-month unpaid suspension. However the warden rejected the settlement and ultimately the Civil Service Commission ordered his removal.

On appeal, the Appellate Division of the Superior Court holds that the officer failed to prove that the DAG had actual or apparent authority to settle. It also rejected the officer’s argument that removal was too severe given his previous unblemished record.

Retirement eligible employee; layoff does not end right to accumulated leave; health insurance

Archie F. Williams v. City of Camden, 2013 N.J. Super. Unpub. LEXIS 269

The Appellate Division of the Superior Court holds that the City of Camden was obligated, by ordinance and a collectively negotiated agreement, to pay a retired City employee half of his accumulated sick and the health insurance premiums for him and his dependents. The employee chose to retire after he was notified he would be laid off and subsequently advised he could not remain employed as he had no civil service bumping rights.

Williams, a Management Information Systems Specialist, received a 45-day notice that he would be laid off from effective January 18, 2011. He would have a little over 27 years of service with the City. On January 5, 2011, the Civil Service Commission advised Williams that he had no rights to bump into another position. Williams then submitted a retirement application, which because it had been submitted after January 1, took effect on February 1.

Taking that the position that Williams layoff occurred before he retired, the City refused to provide the free health insurance coverage and payment for his accumulated sick leave. A trial judge granted summary judgment holding:

- Williams had retired, not been laid off, and was entitled to the payment for accumulated sick leave;
- The City was obligated to pay for the health insurance for Williams and his dependents;
- Williams was not entitled to an amount equal to the premiums the City should have paid after he retired. Williams had not purchased health insurance, but had not incurred any medical expenses in the interim.

The City did not appeal its obligation, going forward, to pay the health insurance premiums. The appeals court upholds the trial court's order and its reasoning. It finds that Williams was not entitled to damages based on an argument that the City had been "unjustly enriched" by not paying the premiums. It also finds that Williams acted reasonably and promptly because he did not receive information about bumping rights until the deadline to retire prior to his layoff had passed.

Electronic records used to resolve factual dispute between public employee and police officer

Alfano v. Patrolman Pierce Schaud, et al., ___ N.J. Super. ___ 2013 NJ Super LEXIS 25

The Appellate Division of the Superior Court affirms a trial court ruling dismissing, on summary judgment, a civil rights suit filed by an Atlantic County employee against a Longport police officer and the Borough. The court's ruling has been approved for publication and is precedential.

The officer was dispatched to the Longport library because the County employee had created a traffic hazard by illegally parking his vehicle to make a delivery to the library. The librarian told the County employee that a police officer wanted to see him about his illegally parked car. The County employee alleged that a 40-minute encounter ensued during which the officer berated the employee, threatened to have him fired. The County worker alleged the officer said that he was directed to harass the employee because he was a political enemy of Longport officials. It was undisputed that two legal, one-hour limit, parking spaces in front of the library were occupied by the Mayor and another official and the employee said that if they did not park there all day, then he would have had a place to park while making his delivery. Although the factual accounts of the County employee and the officer differed, recorded voice communications among, the officer, the librarian the police dispatcher and superior officers established that the encounter lasted no more than 10 minutes after which the officer drove his car to a garage to have a minor repair performed, an action also confirmed by audio recording.

Analogizing the voice recordings to patrol car videos, and citing a US Supreme Court case, the court holds that summary judgment was appropriate, despite the conflicting factual accounts as electronic evidence establishes that the incident could not have lasted 40 minutes.

Tenured teacher, RIF, bumping rights apply to all endorsements on teaching certificate

Enrika Gillikin v. Garfield Board of Education, 2013 N.J. Super LEXIS 348

The Appellate Division of Superior Court, affirming the decision of the Commissioner of Education, finds that the school district violated the rights of a tenured elementary school teacher, who also held an endorsement for teaching elementary school Italian, when it laid her off but allowed non-tenured elementary school teachers to remain employed. The Commissioner held that tenure applies to all endorsements within an educator's teaching certificate.