



**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

June 25, 2009

MEMORANDUM

TO: Commissioners

FROM: Ira W. Mintz
General Counsel

SUBJECT: Supplemental Report on Developments in the Counsel's Office Since May 28, 2009

Other Cases

In New Jersey Transit Corp. v. PBA Local 304, App. Div. Dkt. No. A-3341-07T3 (6/23/09), the Appellate Division reversed a trial court decision that had set aside a grievance arbitration award. The arbitrator had awarded an employee compensation after a temporary reassignment. The trial court found that the award violated public policy by severely restricting the chief's statutory responsibility to promote and provide for public safety. The Appellate Division held that this argument overlooks the fact that the arbitration award does not prohibit the chief from making these personnel assignments. The arbitrator merely found, from an interpretation of the parties' contract, that officers who are involuntarily reassigned from certain positions are entitled to compensation. The issue is about compensation, not the authority of the chief to reassign officers as he sees fit. Because the arbitrator's decision was based on a reasonable, although fairly debatable interpretation of the contract, the court stated that it was compelled to uphold it.

In New Jersey Transit Corp. v. PBA Local 304, App. Div. Dkt. No. A-3342-07T3 (6/23/09), the Appellate Division affirmed a trial court decision that had restrained arbitration over a grievance challenging a minor disciplinary determination after finding that Article XX of the parties' contract pertains to the arbitration of disputes arising from the interpretation of the

contract itself, not to individual disciplinary matters. Article XX provides, in relevant part:

- (A) Police Officers who have been in service more than (1) year or not otherwise on probation shall not be disciplined or dismissed from service without just cause.
- (B) Any disagreement, dispute, or grievance (including discipline) which shall arise between the parties with respect to the interpretation or application of the terms of this Agreement shall be adjusted as follows. . . .

The Court held that unless the discipline impacts an interpretation of the contract or how the contract is to be applied, it does not fall under Article XX. The Court also noted that it was satisfied that the internal grievance procedures available to the grievant provided sufficient procedural due process for these minor disciplinary infractions. The Commission had previously held that the grievance was legally arbitrable and that whether the parties had, in fact, agreed to arbitrate minor discipline was a question outside the Commission's limited scope of negotiations jurisdiction. New Jersey Transit, P.E.R.C. No. 2008-031, 33 NJPER 286 (¶108 2007).

In a 4-3 decision in Mount Holly Tp. Bd. of Ed. v. Mt. Holly Tp. Ed. Ass'n, ___ N.J. ___ (2009) (6/24/09), Chief Justice Rabner reaffirmed that, in general, collective negotiations agreements ("CNAs") supersede individual contracts. To the extent provisions in an individual employment contract conflict or are inconsistent with terms in a CNA, and diminish or interfere with rights provided by the CNA, the language in the individual contract must yield to the CNA. A custodian's employment contract conflicted with the CNA and diminished its specific terms by depriving him of the right to arbitrate a mid-contract termination; therefore, on remand, the custodian is entitled to a hearing before an arbitrator to address the grievance challenging his termination. The individual contract provided for termination by either party on 14 days' notice. The CNA prohibited discharges without just cause. The Court stated that in reaching a contrary result, the Appellate Division had placed too much emphasis on the language used in the CNA in Pascack Valley Reg. H.S. Bd. of Ed. v. Pascack Valley Reg. Support Staff Ass'n, 192 N.J. 489 (2007). The CNA in that case had stated that any dismissal shall be considered a disciplinary action and shall be subject to the grievance procedure. The Court stated that CNAs need not parrot the language used in the CNA in Pascack Valley. The Court noted that a 3-3 Supreme Court decision in Northvale Bd. of Ed. v. Northvale Ed. Ass'n, 192 N.J. 501 (2007), which also involved a termination on notice and a just cause clause, is not precedential and that the unpublished Appellate Division decision in that case is likewise not precedential. Finally, the Court stated that requiring arbitration in this case is consistent with the Legislature's amendment to N.J.S.A. 34:13A-5.3 which extends a presumption in favor of arbitration to public employees. Justice Rivera-Soto, joined by Justices LaVecchia and Hoens, dissented.