Recent Judicial and Legislative Developments
April 2010 through March 2011

Public Employment Relations Commission

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This report contains information about court actions involving Commission decisions since the April 2010 Annual Conference. It also summarizes other cases that bear on labor relations and public employment in New Jersey, as well as legislation enacted over the past year affecting public employees and public employers. The case summaries should not be relied on as a basis for taking action or advocating a position; instead please read any cases of interest. In addition, take care to note the cases that are pending before appellate courts because subsequent decisions may alter or modify the rulings in those cases.

Appeals from Commission Decisions

The Appellate Division reversed the Commission's decision in Morris Cty. Sheriff's Office and Cty. of Morris, P.E.R.C. No. 2010-16, 35 NJPER 348 (¶117 2009), recon. den. P.E.R.C. No. 2010-52, 36 NJPER 24 (¶11 2010), rev'd, 418 N.J. Super. 64 (App. Div. 2011). The Commission held that the employer had engaged in unfair practices when, during interest arbitration, it directed that staff who fill positions normally closed on the weekend will no longer be permitted to work those posts on a holiday. The Court held that the employer did not violate the Act when it "sought a unilateral end to the long-standing employment practice that had permitted public employees who were assigned to posts that are normally nonoperational on weekends to nevertheless work those posts on nonoperational holidays and be paid a premium for the privilege."

The Appellate Division affirmed Wall Tp. Bd. of Ed. and Wall Tp. Information Technology Ass'n, P.E.R.C. No. 2010-24, 35 NJPER 373 (¶126 2009), recon. den. P.E.R.C. No. 2010-63, 36 NJPER 52 (¶24 2010), aff'd, 2011 N.J. Super. Unpub.

LEXIS 179 (App. Div. 1/26/2011) The Commission decided the case based on a stipulation of pertinent facts signed by counsel for the Board and the Association. The Commission held that the Board engaged in unfair practices by terminating a computer technician based on her exercise of conduct protected by the Act and ordered that the employee be reinstated with back pay. The Board sought reconsideration asserting that it had changed law firms and its former attorney had not been authorized to enter into that stipulation. The Court affirms the Commission's refusal to reconsider its decision and finds that the Superintendent was aware of the stipulation before the Board changed law firms. The Court rejects the Board's challenge to reinstatement holding that the argument was improperly raised for the first time on appeal. The Court holds that the remedy was proper and that reinstatement would not be a bar to future adverse actions taken for "legitimate, non-retaliatory reasons."

Related Court Matters

In Fort Lee PBA Local No. 245 v. Borough of Fort Lee, 2010 N.J. Super. Unpub. LEXIS 3144 (Ch. Div. 10/12/10), appeal pending, Judge Robert P. Contillo held that the employer had properly implemented P.L. 2010, Ch. 2, effective May 21, 2010. That statute requires public employees to begin contributing at least 1.5 per cent of their salaries toward the cost of health insurance. However, where a collective negotiations agreement is in place on the effective date, the law provides that the contributions will not commence until that agreement expires. An interest arbitration award setting the terms and conditions of employment for a contract that extended beyond May 21, 2010 had been confirmed by the Commission in Fort Lee and PBA Local No. 245, P.E.R.C. No. 2009-64, 35 NJPER 149 (¶55 2009), appeal of decision on remand P.E.R.C. No. 2010-17, 35 NJPER 352 (¶118 2009). Although the Commission's decision is presently on appeal, the interest arbitration award was not stayed and its terms have been almost entirely implemented; only one issue was unresolved at the time the Court issued its decision. Judge Contillo reasoned that the interest arbitration award "is neither tantamount to, nor the equivalent of, a binding collective negotiations agreement" and did not qualify for the exemption.

Gilleece v. Tp. of Union, 2010 U.S. Dist. LEXIS 129641 (12/8/2010), a federal civil rights action, involves events occurring

just after the record closed in an unfair practice case decided by the Commission. Township of Union, P.E.R.C. No. 2008-20, 33 NJPER 255 (¶95 2007), held that the Township engaged in unfair practices when it refused to supply a list of "jobs-in-blue" program vendors to PBA Local 69 and when it spied on off-duty PBA members in retaliation for their advocacy of continuing the jobs-in-blue program and their criticism of Township officials at a public meeting. Subsequently, PBA members were passed over for promotion even though they scored high enough on Civil Service tests to be elevated in rank. The plaintiffs in the federal case asserted that, by failing to promote them, the Township violated their First Amendment rights, specifically, their right to engage in union activity. The Court dismisses the claim of one plaintiff who failed to show that he exercised any protected rights other than being a PBA member. The Court declines to dismiss the remaining claim of a sergeant who actively participated in the protest and provided testimony in the unfair practice hearing. The Court reasoned that a jury could reasonably conclude that the anti-union views of one member of the interview committee might be known to the other two committee members (one of whom was the police chief) and could have affected the decision not to promote the officer who had engaged in protected activity. The ruling clears the way for a trial.

New Legislation

Assembly Bill 3383 which amends and supplements the "Police and Fire Interest Arbitration Reform Act," has been codified as P.L. 2010, Ch. 105**.** The new law, which took effect January 1, 2011, consists of four sections. Section 1 makes several changes to N.J.S.A. 34:13A-16 that affect the processing of interest arbitration cases. Sections 2, 3 and 4 (N.J.S.A. 34:13A-16.7, 16.8, and 16.9) contain new language that focuses primarily on making interest arbitration awards responsive to and reflective of a two per cent tax levy cap. Here are some highlights:

1. One day after an interest arbitration petition is filed the Commission will appoint an arbitrator by lot. Mutual selection is no longer allowed;

2. An arbitrator must issue an interest arbitration award within 45 days after appointment. That means hearings cannot be postponed and deadlines for submission of briefs or documents by the parties cannot be extended;

3. A party seeking review of an award must file an appeal with the Commission within seven days and the Commission must decide the appeal within 30 days after the appeal is filed;

4. For contracts that expire on January 1, 2011 or any date until April 1, 2014, an arbitrator shall not issue any award which, on an annual basis, increases base salary items by more than 2.0 percent of the aggregate amount expended by the public employer on base salary items.

The 11:15 a.m. program moderated by our Chief Mediator Lorraine Tesauro will cover these and other changes in more detail. In addition, please see the handouts in your conference packets showing the changes made in the existing interest arbitration law and the "Frequently Asked Questions" about the amendments to the interest arbitration law.

Other recent legislation affecting public employment includes:

P.L. 2010, c.44, which reduces school district, county, and municipal property tax levy cap from 4% to 2% and permits unused school district, county, and municipal increases to be banked for three years.

P.L.2011, c. 33, establishes a new procedure in the "Administrative Procedure Act" to allow substantial changes to agency rule-making upon adoption. Upon determining that it would be appropriate to make substantial changes to a proposed rule upon adoption, an agency would submit a public notice to the Office of Administrative Law with : a description of the changes; the reasons for proposing the additional changes; a report and summary of comments received on the original proposal and the agency's responses thereto and the manner in which comments may be made on the new proposed changes between the original and new proposal.

P.L. 2010, c. 75, amends N.J.S.A. 47:1A-5, part of the Open Public Records Act, to cut the cost of copying fees charged by a public body. Under the new law, copying fees are $0.05 per letter-sized page and $0.07 per legal-sized page. If a public body can demonstrate that its actual copying costs are higher than these amounts, than it can charge its actual costs.

P.L. 2010, c. 97 and c 100 place limits on the amount of time vacant teaching positions can be filled by persons holding a substitute teaching certificate, persons with temporary certificates and persons who are being used to fill positions in areas not authorized by their credentials. See N.J.S.A. 18A:16-1.1(a) through (d).

P.L.2010, c. 43 and c. 103, respectively, increase the length of time a public body can re-employ previously laid-off firefighters and law enforcement officers.

Pay, Benefits, Job Security

Compensation

In New Jersey Association of School Administrators v. Schundler, 414 N.J. Super. 530 (App. Div. 2010), the Appellate Division upheld certain Department of Education regulations but found that others were invalid because they improperly deprived certain administrators of vested rights and reduced the compensation of tenured assistant superintendents. The court holds that a school employee's compensation includes not just the amount printed on the salary check; it encompasses as well the overall package of benefits that accompany that employment compensation and includes wages, stock option plans, profit-sharing, commissions, bonuses, golden parachutes, vacation, sick pay, medical benefits, disability, leaves of absence, and expense reimbursement.

In re Snellnaker, 414 N.J. Super. 26 (App. Div. 2010), overturns a ruling of the Division of Pensions and Benefits that had denied a former chief of police credit toward his pension for retroactive pay increases made pursuant to the settlement of a lawsuit against his employer, Atlantic City. The chief had been unlawfully denied salary increases granted to his subordinates, contrary to N.J.S.A. 40A:14-179. He filed suit against the City. In the pension dispute, the city acknowledged that he was awarded retroactive salary increases as part of a settlement of all claims because the increases had been wrongfully withheld. The appellate court held that the Division employed an erroneous view of N.J.S.A. 43:16A-1(26) to conclude that the reasons for including this award in the settlement were irrelevant. The mere fact that those increases coincided with the police chief's retirement did not render them "individual salary adjustments. granted primarily in anticipation of" his retirement that were not creditable for retirement benefits.

Paid Leave

In New Jersey Law Enforcement Supervisors Ass'n v. State of New Jersey, 414 N.J. Super. 111 (App. Div. 2010), the Appellate Division held that the police and firefighters paid convention leave statute, N.J.S.A. 11A:6-10, is not unconstitutional as special legislation or because it violated the equal protection rights of members of employee organizations not affiliated with the unions designated in the statute.

Health Benefits and Premiums (1.5 law)

On January 20, 2011, Mercer County Superior Court Judge Linda Feinberg issued final decisions in two lawsuits, one involving State employees, the other involving school

district and municipal employees, that had been brought by a coalition of public sector labor organizations challenging the validity and constitutionality of P.L. 2010, Ch. 2. The Court dismisses the complaints in both cases. The plaintiffs can appeal the rulings to the Appellate Division of the Superior Court.

In New Jersey State Firefighters' Mutual Benevolent Association, New Jersey State Policeman's Benevolent Association et als. v. State of New Jersey, New Jersey Department of the Treasury, New Jersey State Health Benefits Commission, et als 2011 N.J. Super. Unpub. LEXIS 154 (Law Div. 2011), the plaintiffs attacked the validity of the law's mandate that requires employees to contribute 1.5% of base salary toward the cost of health care coverage. Judge Feinberg's 167- page opinion reviews each of the plaintiffs' claims and upholds the law. Pages 53 through 82 discuss the interrelationship of the law, the State constitutional rights of public employees under Article I, Par. 19, and the impact of the New Jersey Employer-Employee Relations Act, with emphasis on the extent to which negotiations and interest arbitration proposals that are inconsistent with the law's mandates have been preempted. A preliminary decision, New Jersey State Firefighter's Mut. Benevolent Assoc. v. State, 2010 N.J. Super. Unpub. LEXIS 2312 (Law Div., May 21, 2010) denied an application for interim relief and temporary restraints in a challenge to P.L. 2010, c. 2 as it related to pending interest arbitration proceedings.

The companion case, Communications Workers of America v. State of New Jersey, Department of Treasury, Division of Pensions and Benefits and the State Health Benefits Commission 2011 N.J. Super. Unpub. LEXIS 316 (January 19, 2011) focuses on Section 8 of P.L. 2010, c. 2 requiring that changes in the provision of health care benefits that are included in collective negotiations agreements between the State and its employees negotiated in the State Health Benefits Program will be imposed, without negotiation, to local government employees participating in the State Health Benefits Program or education employees covered by the School Employees Health Benefits Program at the same time and in the same manner as State employees. Judge Feinberg, relying upon the reasoning contained in New Jersey State Firefighters' Mutual Benevolent Association, rejects the plaintiffs' challenge that Section 8 violates the State constitutional rights of public employees under Article I, Par. 19. The opinion also reviews and rejects the

plaintiffs' argument that because negotiations between the State and unions representing its employees would automatically be passed onto local employees, Section 8 is an illegal parity clause because the state unions will be negotiating both for its employees and those in local jurisdictions, making it less likely the State would agree to modifications through negotiations. Judge Feinberg's opinion acknowledges the analogous impacts of Section 8 and parity clauses that the Commission has found to be illegal subjects for negotiations. However, the Court reasons (slip opinion at 35), that because the arrangement contained in Section 8 is the result of direct legislative action, it is not illegal as:

> Whatever rights may have been granted by the Legislature with the passage of N.J.S.A. 34:13A-5.3, the Legislature has the authority to modify or eliminate through subsequent constitutional legislation, just as it has done here by enacting Chapter 2, Section 8.

Health Benefits/Premiums (retirees)

In Point Pleasant Borough PBA Local #158 v. Borough of Point Pleasant, 410 N.J. Super. 564 (App. Div. 2010), the Appellate Division held ultra vires a municipal ordinance that required more than 25 years of service with the Borough for a retiree to be eligible for paid health benefits. See N.J.S.A. 40A:10-23. The Court ordered that the Borough assume the cost of medical expense benefits for the three individual plaintiffs, and ordered that they be reimbursed the costs to obtain equivalent coverage after the complaint was filed.

In Petersen v. Township of Raritan, ___ N.J. Super. ____ 12 A.3d 250; 2011 N.J. Super. LEXIS 25 (App. Div. Feb 9, 2011) the Appellate Division construes the health benefits language of a 1997-1999 collective negotiations agreement that was in effect when Peterson retired on August 1, 1999. The officer choose to be covered by a traditional indemnity plan rather than a point of service (POS) plan. At that time there was no cost to officers retiring with 25 years or more of service for either of the coverages. In June 2008, the employer eliminated the traditional indemnity plan for any "future enrollees." It advised both current and already retired employees that they could either receive the POS plan without cost or remain in the traditional plan by paying any premium costs that exceeded the premium paid by the employer for the POS plan. The Court noted the CNA in force when the

officer retired provided that retirees with 25 years of service "shall continue to receive all health and medical benefits provided by the employer for the remainder of his life. Such coverage shall be provided at the expense of the employer." The Court construed the clause as guaranteeing retirees only the medical benefits that the employer provided, as opposed to a specific level of coverage in effect when a qualified officer retires.

Job Security

In Burlington Cty. College Faculty Ass'n v. Burlington Cty. College, 2010 N.J. Super. Unpub. LEXIS 721 (App. Div. 4/7/2010), the Appellate Division upheld a ruling by the Burlington County College Board of Trustees that faculty employed for more than five years in the job title of Lecturer or in the job title of Lecturer and then Instructor are not tenure eligible.

In Peck v. Ocean Cty., 2010 N.J. Super. Unpub. LEXIS 1623 (App. Div. 7/19/10), the court held, based on N.J.S.A. 2A:157-10.1, that the County Prosecutor had the nearly absolute at-will statutory authority to terminate a Deputy Chief Investigator.

Joyce Tuck-Lynn v. State-Operated School District of the City of Newark, 2011 N.J. Super. Unpub. LEXIS 518 (App. Div. 3/3/11) holds that failure to strictly comply with statutory teacher evaluation procedures does not preclude a Board from not renewing a non-tenured teacher's employment contract. The Court notes that the applicable statutes do not include a remedy for non-compliance. The Court upholds the decision of an Administrative Law Judge, adopted by the Commissioner of Education, finding that the non-renewal was based on performance. Both the Commission and the Courts have held, in the context of the Employer-Employee Relations Act, that evaluation procedures are negotiable and breaches of those procedures can be remedied through binding arbitration. See e.g., Lacey Tp. Bd. of Ed. v. Lacey Tp. Ed. Ass'n, 259 N.J. Super. 397 (App. Div. 1991), aff'd., 130 N.J. 312 (1992) (upholding arbitration award setting aside tenured teacher's evaluation for non-compliance with evaluation procedures). However, those cases do not hold that a failure to follow evaluation procedures requires a Board to renew the contract of a non-tenured teacher.

Grievance Arbitration

In Linden Bd. of Ed., v. Linden Education Association ex. rel. Mizichko,

202 N.J. 268 (2010), the New Jersey Supreme Court reversed an Appellate Division decision and reinstated an arbitration award. The parties had asked the arbitrator whether the Board had just cause to terminate the employment of a custodian and if not, what shall be the remedy. The contract did not define just cause and the arbitrator found just cause to discipline, but not to terminate. Two judges of an Appellate Division panel interpreted the arbitrator's decision as having found just cause to terminate and therefore the arbitrator had no authority to consider other remedies. The dissenting judge concluded that the arbitrator's award should be confirmed. The Supreme Court disagreed with the two judges, stating that the agreement did not define just cause; the arbitrator properly filled in the gap and gave meaning to the term; the arbitrator concluded that progressive/corrective discipline was an integral part of the just cause concept; and the employee's misconduct was not so egregious to support just cause to terminate. The Supreme Court concluded that the arbitrator's determination satisfied the "reasonably debatable" standard.

In PBA, Local No. 11 v. City of Trenton ___ N.J. ____, 2011 N.J. LEXIS 349 (3/29/11), a divided Supreme Court affirms, by a 4-3 vote, a decision of an appellate division panel and holds that an arbitration award regarding compensation for "muster time" was "reasonably debatable" and should not have been set aside. The high court remands the case to the trial division to enter an order confirming the arbitration award. The grievance claimed that the City violated the parties' contract by requiring police officers and detectives to report ten minutes before their shifts for muster without additional compensation. The award gives the officers straight time as compensation. The trial court found that the arbitrator rewrote the contract and that the matter was not "debatable, at all." By a 2-1 vote, an Appellate Division panel reversed and upheld the award. 2010 N.J. Super. Unpub. LEXIS 352 (2/24/10). Justice Virginia Long's majority opinion cites Linden Board of Education v. Linden Education Association ex rel. Mizichko, 202 N.J. 268 (2010), for the proposition that "an arbitrator's award will be confirmed 'so long as the award is reasonably debatable.'" 202 N.J. at 276. The majority opinion also holds that an arbitrator, to fill in apparent gaps in the contract "may weav[e] together" all those provisions that bear on the relevant question in coming to a final conclusion. When that occurs, even if the arbitrator's decision

seems to conflict with the language of one clause of an agreement, so long as the contract, as a whole, supports the arbitrator's interpretation, the award will be upheld. The dissent, written by Chief Justice Stuart Rabner, asserts that the arbitrator wrote a new term into the contract that was at odds with the plain language of the relevant provisions and was not reasonably debatable.

In City of Clifton v. FMBA Local 21, 2010 N.J. Super. Unpub. LEXIS 820 (App. Div. 4/14/2010) the Appellate Division affirmed a trial court decision upholding a procedural ruling in a bifurcated arbitration. The arbitrator had found that the employer's conduct was a waiver of the requirement that the union adhere strictly to the time lines of the grievance procedure. The lower court held the award was reasonably debatable.

In Medford Tp. Bd. of Ed. v. Medford Tp. Ed. Ass'n, 2010 N.J. Super. Unpub. LEXIS 1070 (App. Div. 5/18/10), the Appellate Division considered a matter that had been summarily remanded in light of Mount Holly Tp. Bd. of Ed. v. Mount Holly Tp. Ed. Ass'n, 199 N.J. 319 (2009). An untenured custodian was fired mid-year pursuant to a 14-day notice provision in an individual employment contract. He was also covered by the just cause clause of a collective negotiations agreement. The court holds that the agreement confers authority upon the arbitrator to construe the just cause provision and that the challenge to the discharge was a "claim of loss or injury" based on an alleged misinterpretation or misapplication of the contract.

Discipline

In In re the Tenure Hearing of Gilbert Young, Jr., District of the Borough of Roselle, 202 N.J. 50 (2010), the New Jersey Supreme Court held that a determination by the Division of Children and Families that charges of child abuse of a minor student by a teacher were unfounded, did not bar the district from filing charges seeking to terminate the teacher's employment.

In In re Suspension of the Teaching Certificate of Melissa Van Pelt, 414 N.J. Super. 440 (App. Div. 2010), the Appellate Division held that N.J.S.A.18A:26-10 and N.J.S.A. 18A:28-8, relating to notice of termination and suspensions of teaching certificates based on a teacher's breach of contract, equally apply to teaching staff members of charter schools as they do to teaching staff members of public schools.

In In re the Tenure Hearing of Marcelino Basulto, 2010 N.J. Super. Unpub.

LEXIS 1759 (App. Div. 7/23/10), the Appellate Division upheld the dismissal of a tenured school custodian. The Court stated that in the absence of any statutory or contractual provision that required the application of progressive discipline, there was no error in the Commissioner of Education's conclusion that termination was warranted.

In Jeannette v. West Essex Reg. School Dist. Bd. of Ed., 2010 N.J. Super. Unpub. LEXIS 1236 (App Div. 5/18/2010), the court affirms the Commissioner of Education's dismissal, based on lack of jurisdiction, of an appeal of the termination of a non-tenured custodian The Commissioner, rejecting a decision on the merits by an Administrative Law Judge, stated "that resolution of the parties' dispute turns on their rights and obligations under a collectively negotiated agreement -- decisions that the Commissioner has no authority to make as the dispute does not arise under the school laws. The employee did not file a grievance.

In Winthrop McGriff v. Bd. of Ed. of the Tp. of Orange, 2011 N.J. Super. Unpub. LEXIS 86 (App Div. 1/12/2011), the court dismisses the appeal of a non-tenured, part-time athletic director who was terminated by the Board after the district's soccer team was eliminated from the state tournament for using players who were not enrolled in the District. The Commissioner had held that the dispute did not arise under any provision of the Education Law and that the Department of Education lacked jurisdiction to rule on issues arising from employment contracts.

In Winters v. North Hudson Reg. Fire and Rescue, 2010 N.J. Super. Unpub. LEXIS 2152 (8/30/10), the Appellate Division held that doctrine of collateral estoppel did not apply and that two Civil Service Commission determinations upholding the plaintiff's discipline did not bar litigation of plaintiff's claims under the Conscientious Employee Protection Act and the United States Constitution.

Three decisions involving discipline of New Jersey Transit police were issued on the same day: Patrol Officer Jonathan Giles, et al. v. New Jersey Transit Corporation, 2011 N.J. Super. Unpub. LEXIS 410 (App Div. 2/23/11); Sergeant Maryelyn Conway, et al. v. New Jersey Transit Corporation, 2011 N.J. Super. Unpub. LEXIS 429 (App Div. 2/23/11); and Sergeant Melvin Webb v. New Jersey Transit Corporation, 2011 N.J. Super. Unpub. LEXIS 438 (App Div. 2/23/11). The disputes in these cases arise under the disciplinary section of the statute governing NJT police, N.J.S.A. 27:25-15.1.c.

The decisions: address how the 45-day time limit on bringing disciplinary charges should be applied: hold that appeals from disciplinary actions imposed by NJT are to be filed with the Appellate Division of Superior Court as NJT is deemed a State administrative agency; and that internal NJT disciplinary procedures must be used before a disciplinary sanction can be appealed.

Discrimination/Retaliation

In Nini v. Mercer Cty. Community College, 202 N.J. 98 (2010), the New Jersey Supreme Court, reversing an Appellate Division decision, held that the refusal to renew the contract of an employee over seventy years old, on the basis of age, is a prohibited discriminatory act under the New Jersey Law Against Discrimination (LAD). The high court disagreed with the analysis of the Appellate Division, 406 N.J. Super. 547 (App. Div. 2009), that the over-70 statutory exception to the New Jersey Law Against Discrimination, N.J.S.A. 10:5-4 to -49, should be interpreted to equate a contract non-renewal with a termination and to bar an age-based non-renewal.

In Policastro v. Tenafly Bd. of Ed., 710 F. Supp. 2d 495 (D.N.J. 2010), a federal judge ruled that a school's content-neutral mailbox policy was a valid time, place and manner limitation and did not violate a teacher's First Amendment rights. The policy required teachers to seek permission before distributing personal correspondence through the school mailboxes.

In Racanelli v. Passaic Cty., 417 N.J. Super. 52 (App. Div. 2010), the Appellate Division held that Racanelli, a sheriff's officer who had been transferred and then laid off, was not barred from pursuing his CEPA (whistle-blowing) claim in the Superior Court, Law Division because he did not take a timely appeal of the Civil Service Commission decision upholding his layoff.

In Cowan v. Carteret Bd. of Ed., 2010 U.S. Dist. LEXIS 15215 (D. N.J. 2/22/2010), a federal judge denied the school board's motion for summary judgment over a claim that the board violated a teacher/union president's claim that his First Amendment rights were violated when he was suspended him for placing Jack London's one-page essay "The Scab" in the school mailboxes of three members of the Carteret Education Association who refused to participate in a job action. The Court held, however, that claims alleging violations of the teacher's constitutional rights made against administrators, stemming from an

alleged retaliatory schedule change and a suspension, were barred by qualified immunity.

In NAACP v. North Hudson Regional Fire and Rescue, 2010 U.S. Dist. LEXIS 98671; 110 FEP. 644 (9/21/10), a federal judge found that a residency requirement caused a disparate impact on African-American residents of the tri-county area and that it lacked any business necessity. The Court permanently enjoined NHRFR from hiring from a civil service list until it obtains a new list that expands the residency requirement to include Hudson, Essex and Union counties. NHRFR, formed in 1998 in accordance with the Consolidated Municipal Services Act, N.J.S.A. 40:48B-1, et. seq., is essentially a consolidation of the former fire departments of Guttenberg, North Bergen, Union City, Weehawken and West New York.

In Patterson v. Cannon, 2010 N.J. Super. Unpub. LEXIS 2105 (App Div. 8/24/10), the State appeals court held that the trial judge may have improperly resolved an issue of fact in defendants' favor, i.e., whether statements to plaintiff's union representative that any attempt to pursue a grievance would result in plaintiff's firing, were threats that interfered with plaintiff's due process rights under the state Civil Rights Act, N.J.S.A. 10:6-1 to -2.

Lee v. NJ Transit, 2011 U.S. App. LEXIS 5423 (3d Cir. N.J., 3/17/ 2011). affirms a United States District Court ruling dismissing the discrimination and duty of fair representation claims of a terminated New Jersey Transit bus driver who left the scene of an accident involving a bus he was driving. The driver claimed that Amalgamated Transit Union Local 825, improperly refused to take his case to arbitration and withdrew an offer of reinstatement. The Court notes that whether there was just cause for his termination are not germane as the driver is appealing dismissal of discrimination claims.

Edward Jackus v. City of Elizabeth Board of Education, et al., 2011 N.J. Super. Unpub. LEXIS 619 (App. Div. 3/9/2011) determines what forums are appropriate to resolve claims by an administrator who was removed from a 12-month position he received as a result of a settlement of a federal lawsuit. In 2010, his position was among 500 jobs that were abolished by a reduction in force. He was transferred into a 10-month teaching position with a proportionate reduction in salary. Since 1993 Jackus had been a City Council member. In 2001, following a 2000 election, the Board filed tenure charges against

Jackus, then a vice-principal, and two other administrators, relating to whether sufficient fire drills had been held in their schools. After the State Board dismissed those charges and the dismissal was upheld by the Appellate Division, Jackus filed a multi-count federal civil rights action. To settle the case, the Board agreed to pay $75,000.00 in counsel fees and to promote Jackus from his to a 12-month job, "Supervisor of Physical Education, Health, Safety and Athletics." The agreement provided that while Jackus held the post, the job would not be abolished and that he could only be removed via tenure charges. After the RIF, Jackus sought injunctive relief, alleging that his demotion violated the settlement and was retaliatory for his political activities. The trial court ordered that Jackus be immediately restored to his position with back pay. The Appellate Division holds that the Commissioner of Education must find facts concerning the propriety of the RIF. The case would then be returned to the trial court. It also holds that an injunction was unnecessary because monetary damages at the end of the case could fully remedy any claims.

Open Public Records Act ("OPRA")

In Burnett v. Gloucester Cty., 415 N.J. Super. 506 (App. Div. 2010), the court holds that settlement agreements executed by third parties on behalf of a governmental entity constitute government records as defined by the Open Public Records Act and the County was not excused from its OPRA obligations because the requested documents were not in its possession.