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

May 28, 2019

TO: Commissioners

FROM Counsel Staff

RE: Counsel's Office Developments since April 25, 2019

COMMISSION CASES

New Appeals

The State Troopers Fraternal Association has appealed the Commission's ruling [P.E.R.C. No. 2019-30, 45 NJPER 304 (¶79 2019) and P.E.R.C. No. 2019-43, __ NJPER ___ (¶_____ 2019) denying reconsideration] holding that an officer's request to substitute paid sick leave for state and federal family leave to care for his fiancee and their newborn was preempted.

Union County College has appealed the Commission's decision P.E.R.C. No. 2019-35, 45 NJPER 319 (¶84 2019), declining to review the decision of the Director of Representation to include the title academic specialist in a unit of instructional and professional library staff represented by the American Association of University Professors.

Court Decisions

Binding parties to top tier of premium contributions for all four years of an agreement not required by statute

In the Matter of Ridgefield Park Board of Education and Ridgefield Park Education Association, ___ N.J. Super. ___ 2019 N.J. Super. LEXIS 60 (Dkt. No. A-1694-17T4) (copy attached)

In a published, thus precedential, opinion the Appellate Division of the Superior Court reverses and remands a decision of the Commission [P.E.R.C. No. 2018-14, 44 NJPER 167 (¶49 2017)]. The Commission, in a dispute over employee premium contributions had interpreted this portion of L. 2011, c. 78:

> A public employer and employees who are in negotiations for the next collective negotiations agreement to be executed after the employees in that unit have reached full implementation of the premium share set forth in [N.J.S.A. 52:14-17.28c] shall conduct negotiations concerning contributions for health care benefits as if the full premium share was included in the prior contract.

The Commission concluded, as it had in Clementon Bd. of Ed. and Clementon Ed. Ass'n, P.E.R.C. No. 2016-10, 42 NJPER 117 (¶34 2015), appeal dismissed as moot, 43 NJPER 125 (¶38 2016), that the phrase "next collective negotiations agreement . . . after full implementation," meant that the highest premium share must be maintained for all years of a CNA in which the top tier was first reached. In this case, Tier 4 was reached in year one of a four-year CNA.

The court reversed the Commission's decision holding that under the circumstances presented the agency's interpretation of Chapter 78, though consistent with a literal reading of the law, is overly technical since it creates the absurd result of a financial hardship of having Association members pay at the Tier 4 level for three additional years despite contract language setting contribution levels at 1.5%. The court remanded the matter to the Commission to fashion and implement an appropriate remedy within sixty days to refund Association members their health insurance contributions that were improperly deducted. The Commission has appointed an arbitrator to carry out the remand. The Board has applied to the court to stay and reconsider its decision.

CASES RELATED TO COMMISSION CASES

Tenured non-teaching school employee discharge arbitration is subject to TEHL, not contractual grievance arbitration.

Christopher Luskey v. Carteret Board of Education, ___ N.J. Super. ___ 2019 N.J. Super. LEXIS 64 (A-3035-17T2)

In a published, thus precedential, opinion the Appellate Division of the Superior Court decides a jurisdictional issue of first impression. It holds that a dispute over the termination of a tenured public school janitor is subject to arbitration under the jurisdiction of the Commissioner of Education and not the Public Employment Relations commission, even if a collective negotiations agreement (CNA) dictated the length of service required to attain tenure. It notes that the Employer-Employee Relations Act provides that (1) discipline of school employees does not include tenure charges; and (2) contractual grievance arbitration procedures may not be used where the dispute is subject to an alternate statutory appeal procedure.

When the Board filed tenure charges against a janitor with the Commissioner of Education, the Association responded that his tenure was contractual and arbitration should be conducted under the CNA's just cause agreement, rather than pursuant to the Tenure Employees Hearing Law (TEHL). It filed an unfair practice charge and applied for interim relief seeking to enjoin TEHL arbitration. A Commission Designee denied the application finding the situation presented an issue of first impression, thus leaving the Association unable to show it was likely to succeed on the merits. [I.R. No. 2018-4, 44 NJPER 179 (¶54 2017)] As recited in the Appellate Division opinion, after a TEHL arbitrator sustained the discharge of the custodian, the Association went to the Chancery Division to have the award vacated, while the Board sought its confirmation. The lower court confirmed the award.

Trial court wrong forum to challenge interest arbitration award

City of Orange Fire Officers Association FMBA Local 210 v. City of Orange Township, 2019 N.J. Super. Unpub. LEXIS 959 (Dkt No. A-0091-18T2)

The Appellate Division of the Superior Court, in an unpublished opinion, affirms a Chancery Court ruling that the City was barred from challenging a supplemental interest arbitration award because it failed to file an appeal with the Public Employment Relations Commission.

On September 8, 2016, the Commission remanded an interest arbitration award covering the PBA, the FMBA and the FOA for an explanation and clarification of the award as it related to certain factors identified in N.J.S.A. 34:13A-16(g). P.E.R.C. No. 2017-13, 43 NJPER 101 (¶31 2016). Thereafter, the City resolved its disputes with the PBA and FMBA. Accordingly, on remand, the arbitrator only had to clarify his award with regard to the members of the FOA.

On January 3, 2017, the arbitrator issued his decision following the remand. Together with the arbitration decision on remand, the parties were given written notice reminding them that if they wanted to appeal the arbitration award, any appeal had to be filed within fourteen days. The fourteen days to appeal expired on January 19, 2017. The City did not file an appeal with the Commission. On January 26, 2017, the FOA filed a verified complaint and order to show cause in the Chancery Division seeking to enforce the arbitration award. The Chancery Division confirmed the arbitration award and directed the City to comply with it. In making that ruling the Chancery Division refused to address the City's counterclaims. Instead, the Court ruled that because the City had failed to appeal to the Commission, the Court did not have the authority to entertain the City's claims. The City appealed.

Addressing the procedural and jurisdictional issues, the appeals court held:

> In summary, the plain language of the Arbitration Reform Act states that an appeal of an interest arbitration award must be taken to the Commission and that the decision by the Commission, in turn, can be appealed to us. See N.J.S.A. 34:13A-16(f)(5)(a). There is no right to appeal to the Law or Chancery Division. Instead, the only right in the Law or Chancery Division is to "enforce[]" the arbitration award. N.J.S.A. 34:13A-19.

OTHER CASES

Arbitration award allowing weekly planning meeting upheld

Bound Brook Education Association v. Bound Brook Board of Education, 2019 N.J. Super. Unpub. LEXIS 1185 (Dkt. No. A-4611-17T3)

The Appellate Division of the Superior Court, in an unpublished opinion, affirms the ruling of a trial court denying the Association's application to vacate a grievance arbitration award. The Association had unsuccessfully argued to an arbitrator that language in its collective negotiations agreement, barred the Board from requiring elementary teachers to attend mandatory weekly team planning meetings. The meetings began after students were dismissed but concluded before the end of the teacher work day. The arbitrator noted the meeting requirement did not extend the teachers' workday, did not increase the teachers' pupil contact time, and did not reduce the teachers' contractual preparation time.

Challenge to layoffs after merger of sheriff's officers and county police is moot

In re Layoffs of Bergen County Sheriff's Department, 2019 N.J. Super. Unpub. LEXIS 908 (Dkt. Nos. A-4103-16T3/A-4516-16T3

The Appellate Division of the Superior Court, in an unpublished opinion, dismisses as moot the appeals of Policemen's Benevolent Association, Local 49 challenging rulings of the Civil Service Commission and the Chancery Division of the Superior Court. The PBA had challenged the Bergen County Sheriffs Office's (BCSO) implementation of a layoff plan that affected members of the former members of the Bergen County Police Department (BCPD) who came under the authority of the BCSO after the 2015 merger of the BCPD into the BCSO. The appeals court reasoned:

> As already noted, prior to oral argument before us in this matter, the BCSO carried out the layoff plan and the CSC issued a decision on the layoff rights of the laid off officers, which is under appeal. Under these circumstances, we are constrained to dismiss the appeals as being moot because the only relief being pursued in them is a reversal of the CSC's and the Chancery Division's denials of a stay and the Chancery Division's dismissal of the complaint without prejudice. If we were to grant relief to the PBA, staying the layoff plan, it would at this point be meaningless.

Rice does not require discussion of personnel action at the public portion of Board of Education meeting

Constance Centrella v. Prospect Park Board of Education, 2019 N.J. Super. Unpub. LEXIS 1144 (Dkt. No A-4186-17T1)

The Appellate Division of the Superior Court, in an unpublished opinion, affirms the ruling of a trial court that a teaching staff member who requests that her upcoming economic layoff be placed on the public portion of a Board of Education meeting, did not have the right to insist that the Board discuss the personnel action before adopting a resolution approving it. Centrella argued that the Board's failure to discuss her proposed economic layoff violated the Open Public Meetings Act. The right of an affected employee to have a personnel action considered in a public meeting was established in Rice v. Union Cty. Reg'l High Sch. Bd. of Educ., 155 N.J. Super. 64 (App. Div. 1977), and more recently reaffirmed in Kean Fed'n of Teachers v. Morell, 233 N.J. 566 (2018). The Court explained:

> OPMA gives a public employee the right to require the public entity to conduct its discussion, if any, in public rather than in executive session. In this case, after the resolutions were moved and seconded, there was a formal "call for discussion," but the Board members had no comments on any of the resolutions. Contrary to plaintiff's argument, neither OPMA nor Kean required the Board members to engage in a discussion.