



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

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December 2, 2020

TO: Commissioners
FROM: Counsel Staff
RE: Developments in Counsel's Office since November 12, 2020

Commission Cases

Petitions for Certification

A Petition for Certification was filed with the New Jersey Supreme Court by Mr. DiGuglielmo, seeking review of the Appellate Division's ruling in In the Matter of New Jersey Institute of Technology (NJIT), Officer Gregory DiGuglielmo and Public Employment Relations Commission, 2020 N.J. Super. LEXIS 219 (App. Div. Dkt No. A-003772-19T2), that (1) the NJIT police force is "law enforcement agency" as defined by N.J.S.A. 40A:14-200; and (2) NJIT officers are ineligible for special disciplinary arbitration because N.J.S.A. 40A:14-150 restricts that option to officers who work for non-Civil Service municipal police departments.

Appeals from Commission Decisions

Oral argument has been scheduled for January 11, 2021, in In the Matter of Rutgers University Police Department and Leslie Jones (App. Div. Dkt No. A-002286-19T3), in which Mr. Jones' appeals from the Director of Arbitration's determination (DA-2020-002) that he is ineligible for special disciplinary arbitration.

In response to a recent notice of appeal from the Commission's decision (P.E.R.C. No. 2021-5, 47 NJPER 114 (¶28 2020)) in In the Matter of County of Hudson and Hudson County PBA Local 334 (App. Div. Dkt No. A-000342-20), PBA Local 334 advised the Commission that it did not authorize an appeal from PERC's decision, and further that the pro-se appellant (a former PBA president and the grievant in the underlying matter) is acting solely on his own behalf and lacks standing to prosecute the appeal. Counsel's office will take appropriate measures in response thereto.

Commission Court Decisions

Appellate Division reverses trial court's affirmance of Port Authority Employment Relations Panel's final agency decision on PBA's safety-related improper practice charge against Port Authority

In Re: The Matter of the Alleged Improper Practice Under Section XI Paragraph (A)d of the Port Authority Labor Relations Instruction, Final Decision and Order of the Port Authority Employment Relations Panel, Port Authority of New York and New Jersey, 2020 N.J. Super. Unpub. LEXIS ___ (App. Div. Dkt No. A-4137-18T2)

The Appellate Division of the Superior Court, in an unpublished opinion (attached), reversed and remanded a decision of the Superior Court, Law Division, Hudson County (Dkt. No. HUD-L-2723-18) which upheld a final agency decision of the Port Authority Employment Relations Panel (PAERP) on the Port Authority Police Benevolent Association's improper practice charge against the Port Authority of New York and New Jersey. The charge alleged the Port Authority violated the terms of the parties' employment agreement by failing to conform to safety standards promulgated by the Occupational Safety and Health Administration (OSHA) governing battle dress uniforms (BDUs). Agreeing with the appellant, Port Authority, the Appellate Division found that the safety standard at issue was not an OSHA standard applicable to BDUs, thus the PAERP and the trial judge misapplied the law in finding the Port Authority failed to comply

with it. The court remanded to the trial court for the entry of an order, among other things, dismissing the PBA's improper practice charge. The Commission's General Counsel represents the PAERP when its decisions are challenged in New Jersey Courts. (decision attached)

Non-Commission Court Decisions Related to the Commission's Jurisdiction

No new non-Commission court decisions related to the Commission's jurisdiction were issued since November 12.