



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

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January 20, 2021

TO: Commissioners
FROM: Counsel Staff
RE: Developments in Counsel's Office since December 10, 2020

Commission Cases

Update on Federal Court Litigation involving the Commission

The Chairman and several current and former members of the Commission were named as defendants in federal lawsuits that were filed after public sector agency shop arrangements were declared unconstitutional in Janus v AFSCME, 138 S.Ct. 2448 (2018).

In the consolidated cases of Fischer v. Governor of N.J., 2021 U.S. App. LEXIS 1158, and Smith, et al. v. NJEA, et al., 2019 U.S. Dist. LEXIS 205960, Judge Patty Shwartz-Dorsey affirmed the District Court's grant of summary judgment to all defendants. The Court of Appeals found that the District Court correctly concluded that the plaintiffs, New Jersey public school teachers who paid dues and other fees to the state teachers' union, lacked standing to challenge the constitutionality of the waiting periods set forth in New Jersey's Workplace Democracy Enhancement

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Act, and that Janus does not impact their contractual obligations to the union.

Petitions for Certification

A Petition for Certification was filed with the New Jersey Supreme Court by the Port Authority PBA, seeking review of the Appellate Division's ruling in In re Alleged Improper Practice Under Section Xi Paragraph Ad of the Port Auth. Labor Rels. Instruction, 2020 N.J. Super. Unpub. LEXIS 2293, that reversed a final agency decision of the Port Authority Employment Relations Panel (PAERP) which found the Port Authority of New York and New Jersey violated the parties' employment agreement and Occupational Safety and Health Administration (OSHA) safety standards governing battle dress uniforms (BDUs). The Appellate Division found the OSHA standard was not applicable to BDUs, and remanded to the trial court for an order dismissing the PBA's improper practice charge. The Commission's General Counsel represents PAERP when its decisions are challenged in New Jersey Courts.

General Counsel's office filed a brief in support of a Petition for Certification filed 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

In In the Matter of Borough of Bergenfield and PBA Local 309 (App. Div. Dkt No. A-003495-19), the New Jersey Superior Court, Appellate Division, granted a motion filed by the Commission seeking to enforce an order issued by the Commission on April 30, 2020 (CO-2019-288) directing the Borough to sign a draft agreement submitted to it by the PBA that implemented an interest arbitration award. Contemporaneously with the Court's order, the Borough complied with the Commission's order.

Oral argument was held on 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.

Nicolai Thompson filed an appeal in the New Jersey Superior Court, Appellate Division (App. Div. Dkt No. A-000864-20T2), from the Director of Arbitration's determination (DA-2020-005) that, as a college campus police officer employed by Rowan University, he is ineligible for special disciplinary arbitration.

Oral argument is scheduled for February 22, 2021 in In the Matter of Borough of Carteret and FMBA Local 67 (App. Div. Dkt No. A-001845-19), the Borough's appeal from a Commission decision (SN-2019-043) which denied the Borough's request for a restraint of binding arbitration of a grievance filed by FMBA Local 67. The grievance contested the Borough's refusal to re-assign probationary firefighters from a daytime, weekly work schedule to 24-hour shifts following the completion of their Fire Academy training.

Commission Court Decisions

No new opinions on appeals from Commission decisions were issued since December 10.

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 December 10.