



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

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DATE: October 20, 2021

TO: Commissioners

FROM: Counsel Staff

RE: Developments in Counsel's Office since September 29, 2021

**Commission Cases**

**Appeals from Commission Decisions**

The Linden Board of Education filed an appeal in the New Jersey Superior Court, Appellate Division (App. Div. Dkt No. A-000434-21), from the Commission's decision (P.E.R.C. No. 2022-2) denying the Board's request for restraint of binding arbitration of the Linden Education Association's grievance contesting the reduction of certain teaching staff members' salaries upon transfer from 12-month to 10-month positions for the 2020-2021 school year.

The New Jersey Superior Court, Appellate Division, issued an Order granting the motion of Rutgers, the State University of New Jersey, for a stay of arbitration pending its appeal (App. Div. Dkt. No. A003314-20T4) from the Commission's letter (P.E.R.C. Dkt No. SN-2021-021) informing the parties that as a result of an unbreakable tie Commission vote, arbitration would proceed on a

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grievance filed by AFSCME Local 888, alleging Rutgers violated the "unit work rule" by transferring Local 888's unit work to employees represented by another local union.

The New Jersey Superior Court, Appellate Division, issued an Order dismissing, as withdrawn, the appeal of the Mercer County Prosecutor's Office (App. Div. Dkt No. A-2845-20) from the Commission's decision (P.E.R.C. No. 2021-42), affirming an interest arbitration award on remand.

### **Commission Court Decisions**

Appellate Division affirms, in part, and vacates, in part, PERC's order allowing city to implement vaccination mandate

In re City of Newark, 2021 N.J. Super. LEXIS 127 (App. Div. Dkt Nos. A-0146-21, A-0159-21)

The Appellate Division of the Superior Court, in a published opinion (attached), affirms the portion of a PERC order allowing the City of Newark to implement its COVID-19 vaccination mandate, and reverses and vacates the portion of the order that imposed restraints on the City or required any negotiations concerning its implementation, timing, or enforcement. The Appellate Division found that the City has a managerial prerogative to implement the vaccination mandate, but that restraints on that prerogative impermissibly undercut it and the governmental policy it is implementing. The court remanded to PERC for further proceedings consistent with its opinion. Thereafter, the Supreme Court of New Jersey denied motions filed by two police unions seeking emergent relief in connection with the decision.

Appellate Division reverses PERC decision ordering employer to sign CNA that memorialized an interest arbitration award, remands to interest arbitrator to clarify his award

In re Borough of Bergenfield, 2021 N.J. Super. Unpub. LEXIS 2398 (App. Div. Dkt No. A-3495-19)

The Appellate Division of the Superior Court, in an unpublished opinion (attached), reverses PERC's decision mandating that the Borough of Bergenfield sign a collective negotiations agreement (CNA), drafted by PBA Local 309, that memorialized an interest arbitration (IA) award, and remanded with direction that the parties return to the interest arbitrator to clarify his award. The court disagreed with the Commission's decision, which held that the Borough violated the Act by refusing to sign the draft CNA which, the Commission held, accurately reflected the IA award

by its inclusion of the phrase "increments shall be paid in accordance with past practice" from the parties' prior CNA. The Commission found the draft was consistent with the IA award's directive that "all provisions of the existing [prior] agreement shall be carried forward except for those . . . modified by" the IA award, which neither party appealed, and which did not modify the "past practice" language of the prior CNA. The Commission further found that the parties' ongoing disagreement as to whether the Borough correctly implemented certain step increases in accordance with the IA award was a matter of contract interpretation best dealt with through the CNA's grievance procedures, and did not justify the Borough's refusal to sign the CNA. The Appellate Division, disagreeing, held that the dispute was over whether the draft CNA accurately reflected the IA award, including "whether the PBA had accurately copied down the interest arbitrator's salary term," and remanded to the interest arbitrator as the "only arbitrator who can resolve that dispute."

#### **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 September 29.