



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

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Date: December 15, 2021

TO: Commissioners

FROM: Counsel Staff

RE: Developments in Counsel's Office since November 23, 2021

Commission Cases

Appeals from Commission Decisions

No new appeals were filed since November 23.

The Supreme Court of New Jersey granted Mr. DiGuglielmo's petition for certification seeking review of the appellate court's judgment 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. PERC filed a brief in support of Mr. DiGuglielmo's petition.

General Counsel's office filed a letter brief and appendix in In the Matter of County of Hudson and Hudson County PBA Local 334 (App. Div. Dkt No. A-000342-20), wherein the pro se appellant (a

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former PBA president and the grievant in the underlying matter) appeals from the Commission's decision (P.E.R.C. No. 2021-5, 47 NJPER 114 (¶28 2020)) granting the County's motion for summary judgment and dismissing the PBA's unfair practice charge.

The Appellate Division of the Superior Court scheduled oral argument for January 25, 2022 in In the Matter of Rutgers, the State University of New Jersey, AAUP-Biomedical and Health Sciences of New Jersey and Gaetano Spinnato (App. Div. Dkt No. A-4178-19T3), in which Dr. Spinnato appeals from the Commission's decision (P.E.R.C. No. 2020-44) which sustained the refusal of the Director of Unfair Practices to issue a complaint on charges arising from disputes concerning Dr. Spinnato's compensatory time off and revocation of his union membership.

Commission Court Decisions

No Commission court decisions were issued since November 23.

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

Appellate Division upholds arbitrator's dismissal of police union's grievance asserting members' entitlement to back pay and future payment for missed meals and coffee breaks

Englewood PBA Local 216 Superior Officers Ass'n v. City of Englewood, 2021 N.J. Super. Unpub. LEXIS 2907 (App. Div. Dkt No. A-3496-19)

The Appellate Division of the Superior Court, in an unpublished opinion, affirms the Chancery Court's affirmance of a grievance arbitrator's award which dismissed a grievance alleging members of Englewood PBA Local 216 (SOA) were entitled to back pay and future payments for missed meals and coffee breaks. The appellate court rejected the PBA's argument that the award was defective because it was not notarized, absent any case law to support that contention, and found that even if such a requirement existed, the failure to attach a notarization was only a procedural defect that would not warrant the vacating of an award. The Appellate Division further found that the evidence supported the Chancery judge's finding that the award was reasonably debatable as to arbitrator's findings that: (1) the contract compensated members for their breaks and they would in fact be paid twice if they received any additional compensation; and (2) there was no evidence of a past practice that resulted in uncompensated breaks. The appellate court otherwise rejected legal arguments made by the PBA that it did not raise below.