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DATE: February 16, 2022

TO: Commissioners

FROM: Counsel Staff

RE: Developments in Counsel's Office since January 27, 2022

Commission Cases

Appeals from Commission Decisions

The Appellate Division of the Superior Court heard oral argument 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 January 27.

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

Appellate Division dismisses police unions' challenges to Governor Murphy's vaccine mandate for corrections officers

N.J. State Policemen's Benevolent Ass'n v. Murphy, 2022 N.J. Super. LEXIS 15 (App. Div. Dkt Nos. A-1525-21, A-1548-21)

The Appellate Division of the Superior Court, in a published opinion, dismisses the consolidated appeals of the New Jersey State Police Benevolent Association and the New Jersey Superior Officers Law Enforcement Association which challenged Governor Murphy's Executive Order 283, requiring, among other things, that corrections officers present proof of COVID-19 vaccination by February 16, 2022, or face discipline, including the possibility of termination. Finding no merit to the unions' arguments (that the Governor: lacked authority to mandate vaccinations; acted arbitrarily by failing to adequately tailor the order to the magnitude of the emergency; failed to comply with statutory procedural requirements; and violated members' constitutional rights), the court ruled: (1) the Governor was fully empowered under the New Jersey Disaster Control Act to enter the executive order (as well as to re-declare a public health emergency on January 11, 2022); and (2) the individual rights asserted by appellants were of minimal weight when compared to the greater good that the executive order sought to foster and establish. The court found the appropriate balance was "between the 'jab' and the harm to society caused by the lack of jabs . . . conclud[ing] that the latter greatly outweighs the former."

New Jersey Supreme Court declines to reconsider City of Jersey City's petition seeking appeal from appellate court's ruling requiring City to pay union members contractual double-time during 2018 weather-related state of emergency

Jersey City Pub. Emples., Inc. v. City of Jersey City, 2022 N.J. LEXIS 95 (Sup. Ct. Dkt Nos. M-592-21, M-593-21)

The Supreme Court of New Jersey denied the City of Jersey City's motion to reconsider the court's prior denial (mentioned in the November 2021 GC Report) of a petition for certification seeking review of Jersey City Public Employees, Inc., Local 245 v. City of Jersey City, 2021 N.J. Super. Unpub. LEXIS 1018 (App. Div. Dkt No. A-4558-19), in which the appellate panel, overturning a PERC arbitrator's decision in favor of the City, ruled in favor of Jersey City Public Employees, Local 245, regarding its contractual claim for double-time pay during a 2018 weather-related state of emergency. The Law Division found the arbitrator's analysis (construing the disputed provision to require double time pay only when a state of emergency actually alters City operations and only to essential workers) to be reasonably debatable and confirmed it. The appellate court found the contract unambiguously provided that if the Governor declared a state of emergency, then City employees were entitled to double time pay. The Supreme Court's continued refusal to hear the case may have far-reaching financial consequences for the City (and other public-sector employers who may have similar contract language), whose employees have been working under the state's declared state of emergency since March 2020, when the pandemic started.

Appellate Division affirms grievance arbitration award in favor of school board in salary guide step-movement dispute

Trenton Educ. Secys Ass'n v. Trenton Bd. of Educ., 2022 N.J. Super. Unpub. LEXIS 221 (App. Div. Dkt No. A-1973-20)

The Appellate Division of the Superior Court, in an unpublished opinion, affirms an order confirming a grievance arbitration award in favor of defendant Trenton Board of Education. The trial court denied an order to show cause and verified complaint filed by the Trenton Educational Secretaries Association (TESA), seeking to vacate the arbitration award, and confirmed the award. The grievance arbitrator found the Board did not violate the parties' agreement when it discontinued a practice of moving eligible TESA members through the salary guide to the next step under an expired contract. The court rejected the union's contention that the arbitrator made a mistake of fact by incorrectly believing TESA was a mixed bargaining unit, rather than one composed exclusively of secretaries. The appellate court concurred with the trial court's assessment that the arbitrator was entirely cognizant of the makeup of the bargaining unit when she found the secretaries were all tenured employees as to whom the Board is not permitted to reduce their compensation unless tenure charges are sustained, thus those salary increases could not be recouped by the Board in the event the step increases were granted and subsequent negotiations resulted in lower salaries. The appellate court concluded the award was not procured by undue means, not grounded upon a mistake of fact, and that the arbitrator did not exceed or imperfectly executed her power. As such, it did not reach the issue of whether the trial judge and arbitrator misconstrued the dynamic status quo doctrine and the Board's past practice of paying salary increments. The appellate court also affirmed the trial judge's finding that the arbitrator's interpretation of the agreement was reasonably debatable.

Appellate Division reverses and remands Commissioner of

Education’s final agency decision upholding school board’s non-renewal of non-tenured guidance counselor

Truncellito v. Bd. of Educ. of Lyndhurst, 2022 N.J. Super. Unpub. LEXIS 92 (App. Div. Dkt No. A-1306-19)

The Appellate Division of the Superior Court, in an unpublished opinion, reverses and remands a final amended decision of the New Jersey Commissioner of Education which dismissed Ms. Truncellito’s petition seeking reinstatement as a nontenured guidance counselor with the Township of Lyndhurst School District, and which rejected the initial decision of an Administrative Law Judge (ALJ) who found the Lyndhurst Board of Education’s non-renewal determination was improperly motivated by its desire to fill Truncellito’s position with a Lyndhurst resident. In reversing and remanding, the appellate court concluded that the Commissioner erred as a matter of law and failed to consider the ALJ’s factual findings and legal conclusion that the Board’s decision was arbitrary and capricious in violation of N.J.S.A. 18A:27-4.1(b), specifically with respect to the ALJ’s finding that the Board was not motivated by concerns regarding any budget shortfalls but instead was purely motivated by an interest to employ Lyndhurst residents over non-Lyndhurst residents. The court directed the Commissioner to: (1) consider the ALJ’s factual findings in view of the governing statutes, the hearing record, and the parties’ arguments before the ALJ; (2) to explain why the ALJ’s findings were arbitrary, capricious or unreasonable or unsupported by the record, if the Commissioner rejects or modifies them; and (3) if necessary, remand the matter to the ALJ to address a hearsay objection raised by the Board on appeal.

Third Circuit upholds dismissal of public employees’ claims seeking refund of union-dues paid prior to resignation from union

Adams v. Teamsters Union Loc. 429, 2022 U.S. App. LEXIS 1615 (3d Cir. Dkt No. 20-1824)

The United States Court of Appeals for the Third Circuit, in a non-precedential decision, affirms the district court’s summary dismissal of public employees’ claims seeking a refund of the dues they had paid before they resigned from their union, and before the Supreme Court of the United States issued its decision in Janus v. AFSCME, Council 31, 138 S. Ct. 2448 (2018); and asserting that Pennsylvania’s exclusive-representation law, making a union the exclusive bargaining agent for public employees, violates the First Amendment. The Third Circuit held: (1) The employees lacked standing to seek a refund of union dues paid before they resigned the union where the employees' claims for prospective injunctive and declaratory relief were moot because they had not shown their employers or the union would continue to assess union dues; (2) The employees were free to express whatever ideas they wished, including through groups they created and including about the union; (3) The employees were free to associate-or not-with the union, and the law did not violate the First Amendment.