



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

PO Box 429
TRENTON, NEW JERSEY 08625-0429

www.state.nj.us/perc

ADMINISTRATION/LEGAL
(609) 292-9830
CONCILIATION/ARBITRATION
(609) 292-9898
UNFAIR PRACTICE/REPRESENTATION
(609) 292-6780

For Courier Delivery
495 WEST STATE STREET
TRENTON, NEW JERSEY 08618

FAX: (609) 777-0089
EMAIL: mail@perc.state.nj.us

DATE: May 19, 2022
TO: Commissioners
FROM: Counsel Staff
RE: Developments in Counsel's Office since April 28, 2022

Commission Cases

Appeals from Commission Decisions

No new appeals were filed since April 28.

Commission Court Decisions

Appellate Division affirms final Commission decision granting summary judgment in favor of police union on charges that city unilaterally altered its FMLA leave policy in violation of Act

In re City of E. Orange & E. Orange Superior Officers' Ass'n, 2022 N.J. Super. Unpub. LEXIS 733 (App. Div. Dkt No. A-2786-20)

The Appellate Division of the Superior Court, in an unpublished opinion (attached), affirms the Commission's final decision (P.E.R.C. No. 2021-50) which affirmed, as modified, a Hearing Examiner's grant of summary judgment to the East Orange Superior Officers' Association, Fraternal Order of Police, Lodge No. 188 a/w FOP New Jersey Labor Council (FOP), on the FOP's unfair practice charge challenging the City's policy on the use of paid

New Jersey Is An Equal Opportunity Employer

leave under the Family Medical Leave Act (FMLA) and/or New Jersey Family Leave Act. The City unilaterally implemented changes to its FMLA leave policy due to its assertions that officers were abusing such leave and that the abuse impacted the department's ability to deliver its services. Rejecting the City's appeal, the appellate court affirmed substantially for the reasons expressed by the Commission in its final decision. The court found: (1) the Hearing Examiner's findings of fact, which were adopted by PERC, were amply supported by the record; (2) PERC's legal analysis and ruling is consonant with the Act and interpretive case law; and (3) the City did not satisfy the third prong of the Local 195 test - whether negotiations over requiring officers to use paid leave concurrently with FMLA leave would significantly interfere with the determination of governmental policy.

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

Appellate Division affirms Commissioner of Education's final agency decision ordering reinstatement of teaching staff member for school board's failure to properly provide non-renewal notice

Vakulchik v. Bd. of Educ., 2022 N.J. Super. Unpub. LEXIS 712 (App. Div. Dkt No. A-0414-21)

The Appellate Division of the Superior Court, in an unpublished opinion, affirms a final agency decision by the New Jersey Commissioner of Education (Commissioner) ordering the reinstatement of petitioner Monika Vakulchik to her former position as a speech pathologist with the Board of Education of the Borough of Dunellen. In doing so, the Commissioner rejected the decision of an Administrative Law Judge (ALJ) and instead concluded Vakulchik's reinstatement was required, as the Board failed to provide her with proper notice of non-renewal under N.J.S.A. 18A:27-10. The ALJ found the Board substantially complied despite its late notice, as Vakulchik was previously made aware through an annual evaluation, an email, and a meeting. The Commissioner found the statute clearly requires written notice that the Board did not provide. Rejecting the Board's appeal, the Appellate Division found: (1) no error in the Commissioner's finding that the Board failed to comply with the statute; (2) Vakulchik's apparent belief she would not be renewed did not relieve the Superintendent of providing a timely notice of non-renewal; and (3) no error in the Commissioner's finding that comments in an evaluation or email do not comply with the statute, as they are unrelated to the statute's purpose.