



STATE OF NEW JERSEY  
PUBLIC EMPLOYMENT RELATIONS COMMISSION

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DATE: August 10, 2022  
TO: Commissioners  
FROM: Counsel Staff  
RE: Developments in Counsel's Office since June 30, 2022

**Commission Cases**

**Appeals from Commission Decisions**

No new appeals from Commission decisions were filed since June 30.

**Commission Court Decisions**

No new Commission court decisions were issued since June 30.

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

Appellate Division reverses and remands trial court's dismissal of police union's action seeking to vacate grievance arbitration award, finding dismissal was not based on a complete record

Ridgefield Park PBA Local 86 v. Ridgefield Park, 2022 N.J. Super. Unpub. LEXIS 1212 (App. Div. Dkt No. A-0359-21)

The Appellate Division of the Superior Court, in an unpublished

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opinion, reverses on procedural grounds and remands a trial judge's order which denied PBA Local 86's order to show cause (OTSC) seeking to proceed summarily and dismissed its verified complaint to vacate or modify a PERC arbitration award. The arbitrator ruled in the employer's favor on an employment grievance action against the Village of Ridgefield Park under a collective negotiations agreement. The trial court dismissed the OTSC and verified complaint before the PBA had served it on the employer, while there was no pending motion to dismiss, finding the PBA failed to establish "a reasonable probability of success on the merits of the claim or the law on which" it was based "is unsettled." In reversing and remanding, the Appellate Division found the trial judge denied the PBA's OTSC without development of a complete factual record and without the benefit of legal argument. The appellate court thus found the record lacked substantial credible evidence supporting the denial, and further found the proceeding was not recorded as required by the relevant court rule.

Appellate Division reverses, vacates Civil Service final agency decision, and reinstates Paterson firefighter in workplace drug-testing dispute

In re Beagin, 2022 N.J. Super. Unpub. LEXIS 1158 (App. Div. Dkt No. A-1946-19)

The Appellate Division of the Superior Court, in an unpublished opinion, reverses and vacates a final administrative action of the Civil Service Commission (CSC), and orders reinstatement of Mr. Beagin to his position as a firefighter in the Paterson Fire Department (PFD). The CSC failed to adopt an Administrative Law Judge's (ALJ) recommendation to reverse Beagin's removal on disciplinary charges related to his failure to pass a random workplace drug test. The ALJ found PFD did not sustain its burden of proof, specifically questioning the accuracy of the test result in connection with whether an incorrectly large margin of error (twenty percent) was applied to Beagin's sample. The Appellate Division found that the CSC's decision was not untimely, as Beagin argued on appeal, but agreed with his claim that it was unsupported by substantial, credible evidence in the record. The court held the CSC's decision was erroneous because it: 1) misunderstood expert testimony regarding application of the twenty percent standard, never addressing the issue of whether the testing equipment was calibrated to be biased high, and 2) arbitrarily and capriciously shifted the burden to Beagin to prove how the industry standard is applied.

Appellate Division affirms university's denial of employee's

request to reclassify position from athletic "equipment manager" to higher-paid title

Sessoms v. Vernon, 2022 N.J. Super. Unpub. LEXIS 1197 (App. Div. Dkt No. A-1892-20)

The Appellate Division of the Superior Court, in an unpublished opinion, affirms a final decision of the Montclair State University (MSU) Board of Trustees (Board), denying Mr. Sessoms' request to reclassify his employment position from "Equipment Manager" to "Assistant Athletic Director/Director of Equipment Services," which had a higher salary. Sessoms' application for reclassification was governed by the terms of State and local collective negotiations agreements. The Board concluded Sessoms "failed to demonstrate new or additional job duties, a change in scope of work, and/or a change in level of responsibility to a sufficient extent that his responsibilities no longer conformed to his current job description." The Appellate Division found Sessoms did not prove on appeal that the Board's action was arbitrary, capricious, or unreasonable, holding: the Board reasonably concluded, based on Sessoms' "own description of his work," that the fundamental nature and scope of his work had not changed to a sufficient extent to merit a reclassification.

Appellate Division affirms trial court's attorney fee award to county correction officer who prevailed on a claim that the county violated his civil rights by disciplining him for protected union activity

Cornely v. Camden County, 2022 N.J. Super. Unpub. LEXIS 1236 (App. Div. Dkt No. A-0830-20)

The Appellate Division of the Superior Court, in an unpublished opinion, affirms a Law Division post-trial order of final judgment awarding attorneys' fees and costs to Mr. Cornely, a Camden County Corrections Officer, under the fee-shifting provision of the New Jersey Civil Rights Act (NJCRA). The jury found the County and a co-defendant violated Cornely's civil rights by suspending him twice without pay for carrying out his union protected activities as a PBA trustee and president, but could not reach a verdict on similar allegations regarding a third suspension. The trial judge granted Cornely attorneys' fees and costs based on an assessment of his success at trial, awarding \$265,540.23 total, premised on a "lodestar" \$400 hourly counsel rate (roughly twice the retainer rate of his union attorney) and inclusive of attorneys' fees for related matters before the Civil Service Commission and Office of Administrative Law, which Cornely abandoned to file his NJCRA lawsuit, and for an administrative unemployment benefits appeal. The County appealed the fee award, and Cornely cross-appealed the judge's denial of a "fee enhancement." The Appellate Division found: (1)

the ruling was supported by credible evidence in the record demonstrating the experience and skill of counsel in prosecuting a civil rights claim; (2) the trial judge did not abuse his discretion in awarding fees and costs related to the administrative proceedings, as the legal work involved therein was based on Cornely's civil rights claims, which the jury found the County violated; and (3) the trial judge did not abuse his discretion in finding that, under controlling case law, Cornely was not entitled to a fee enhancement where the fee arrangement was not 100 percent contingency.

Appellate Division affirms trial court's decision to vacate grievance arbitration award in favor of employer, in layoff-related municipal employee "bumping rights" dispute

Hoboken Mun. Emples. Ass'n v. City of Hoboken, 2022 N.J. Super. Unpub. LEXIS 1246 (App. Div. Dkt No. A-0143-21)

The Appellate Division of the Superior Court, in an unpublished opinion, affirms a Law Division order that vacated an arbitrator's award sustaining in part and denying in part the Hoboken Municipal Employees' Association's (HMEA) grievance against the City of Hoboken. The grievance alleged the City violated the parties' collective negotiations agreement (CNA) by establishing salaries for certain employees who exercised "lateral" or "demotional" "bumping rights" pursuant to a layoff plan executed by the City, without negotiating with HMEA. When exercising lateral bumping rights, grievants bumped employees who were in a different position but who held the same title. When exercising demotional bumping rights, grievants bumped employees who were in a different title with a lower pay range. The arbitrator found the City violated the CNA with respect to employees' lateral bumping rights but found no violation regarding demotional bumping, concluding that because the City had previously unilaterally established starting salaries for newly hired and promoted employees, a "past practice" existed that allowed the City to likewise fix salaries for employees who were demoted. HMEA filed an order to show cause seeking to vacate the arbitrator's decision. The trial judge reversed, concluding the decision lacked factual support to extend a past practice dealing with new hires and promotions to employees who are demoted to a lower title. The Appellate Division agreed that, unlike new hires (who may accept or reject the job based on the salary offer) and promoted employees (who receive either a better title, a pay raise, or both), demoted employees are required to accept a lesser title and salary than that which they previously bargained for. The Appellate Division further found that a budgetary crisis did not confer upon the City a managerial

prerogative to ignore the CNA and set wages without negotiation, in the absence of an emergency regulation enacted to permit the City to do so.

Appellate Division, reversing trial court, vacates grievance arbitration award in favor of teacher's union, finding arbitrator exceeded powers in interpreting contract in dispute over re-assignment of university professors to non-teaching duties

State of New Jersey (Kean University) v. Council of N.J. State College Locals AFT, AFL-CIO, 2022 N.J. Super. Unpub. LEXIS 1256 (App. Div. Dkt No. A-3469-19)

The Appellate Division of the Superior Court, in an unpublished opinion, reverses a trial court order affirming a grievance arbitration award in favor of the Council of New Jersey State College Locals, AFT, AFL-CIO, whose grievances challenged Kean University's decision to re-assign two tenured professors from teaching to non-teaching duties, in response to falling enrollments in their programs. In a related prior scope of negotiations decision, P.E.R.C. No. 2018-51, 44 NJPER 463 (¶129 2018), PERC restrained arbitration to the extent the grievances challenged Kean's managerial prerogative to assign non-teaching duties, but permitted it on the questions of: 1) whether the non-teaching duties fell outside the grievants' primary duties; 2) the impact of performing non-teaching duties in terms of compensation, workload, and working hours; and 3) if Kean could not show that an educational policy rationale was in fact the basis for assigning non-teaching duties to only the grievants, the arbitrator could assess the frequency, rotation, and allocation of non-teaching duties among employees. On review, the Appellate Division found the arbitrator "addressed none of those questions directly" in determining Kean violated the parties' collective negotiations agreement (CNA), but instead "took it upon himself" to interpret the CNA to devise a "formula" for apportioning between teaching and non-teaching duties. In doing so, the court found the arbitrator exceeded his powers, disregarded the clear language of the agreement and effectively bound the parties to new terms and conditions, significantly modifying the contract in the process. As such, the court found the award was not reasonably debatable, and vacated it.

Appellate Division affirms trial court's dismissal of plaintiff's complaint regarding a claim to enforce a severance policy

Harrell v. AFSCME, Council 63, 2022 N.J. Super. Unpub. LEXIS 1319 (App. Div. Dkt No. A-2832-20)

The Appellate Division of the Superior Court, in an unpublished opinion, affirms the trial court's grant to summary judgment to AFSCME dismissing a complaint brought by its former Executive Director of Council 71 to enforce a \$318,816.36 severance policy. The court found that Council 71's administrator possessed constitutional authority to take actions necessary to preserve the rights and interests of both international and local union members and that he determined that the severance payments would create a financial liability for the union that it would be unable to meet. The severance policy contained language expressing that Council 71 would be required to liquidate assets in order to satisfy the severance payments if necessary. However, the court found that this did not negate the express authority possessed by the administrator to revoke policies contrary to the best interests of the Council members and the International Union. The administrator determined that Council 71 did not have the cash reserves to honor the policy, and that if honored, the New Jersey Organizing Committee's expected revenue would be adversely impacted.

The Third Circuit affirms the District's Court granting of a motion to dismiss appellant's claims regarding reimbursement of agency fees paid prior to Janus.

Schaszberger v. AFSCME Council 13, 2022 U.S. App. LEXIS 19972 (3d Cir. Dkt No. 21-2172)

The United States Court of Appeals for the Third Circuit, in a non-precedential decision, affirms the District Court's granting of AFSCME's motion to dismiss. Appellants, non-AFSCME members who worked in units represented by AFSCME, were subject to agency fees and filed a class action law suit to recover the fees collected prior to the Janus decision. The District Court found that AFSCME was shielded from liability by virtue of its good faith reliance on then-controlling Supreme Court precedent and state law. The Third Circuit agreed.

The Third Circuit affirms in part and vacates in part a District Court's dismissal of employer's claims regarding allegedly unlawful union conduct.

Care One Mgmt. LLC v. United Healthcare Workers East, 2022 U.S. App. LEXIS 20825 (3d Cir. Dkt No. 19-3693)

The United States Court of Appeals for the Third Circuit, in a precedential decision, affirms in part and vacates in part a decision of the District Court. Plaintiffs manage nursing homes and assisted-living facilities throughout the Northeast. The

Unions represented several employees at various Care One facilities. This lawsuit was the culmination of a history of conflict and animosity that characterized the relationship between Care One and the Unions, involving claims of unfair labor practices before the NLRB; a strike after being unable to negotiate a successor CBA; Unions' plans to inspire workers to "become angry about their working conditions and to resort to "more militant" levels of behavior; and one of the unions launching a campaign attacking Care One's labor and business practices which included developing websites, print and radio advertisements, as well as flyers questioning Care One's billing practices and standards of care. Care One sued the Unions for damages arising from these actions. Care One alleged they constituted a pattern of racketeering in violation of RICO. The Third Circuit affirmed the District's court decision that there was no proof of specific intent to defraud in the union's actions as the unions' affidavits provided sufficient evidence that the affiants believed that all material in the advertisements was truthful and accurate, plus unions did not need to present a balanced view in their advertisements, but also vacated a part of the district court's holding, finding that a jury could reasonably see unions' communications and multiple, nearly simultaneous acts of sabotage right before a strike as clear proof of unions' authorization of sabotage, and that the unions had issued a call to arms.