



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

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DATE: November 17, 2022  
TO: Commissioners  
FROM: Counsel Staff  
RE: Developments in Counsel's Office since October 27, 2022

**Commission Cases**

**Appeals from Commission Decisions**

No new appeals from Commission decisions were filed since October 27.

**Commission Court Decisions**

No new Commission court decisions were issued since October 27.

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

Appellate Division affirms Commissioner of Education's jurisdiction to consider health plan equivalency dispute

Boonton Educ. Ass'n v. Bd. of Educ. of Boonton, 2022 N.J. Super. Unpub. LEXIS 1940 (App. Div. Dkt. No. A-1670-21)

The Appellate Division of the Superior Court, in an unpublished opinion, affirms an interlocutory decision of the Commissioner of

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Education which found the Commissioner has subject matter jurisdiction to consider a petition filed by the Boonton Education Association requesting the Commissioner to declare the Board of Education of the Town of Boonton violated N.J.S.A. 18A:16-13.2 by failing to provide a health plan equivalent to the New Jersey Educators' Health Plan (NJEHP) and to compel the Board to provide an equivalent plan. In July 2020, the Legislature required all school districts to offer the NJEHP in addition to any other plans they may offer. Additionally, for those districts that do not participate in the School Employees' Health Benefits Program (SEHBP), but offer health coverage through a private carrier, they must offer a plan which is equivalent to the NJEHP. The Board in this matter is a non-SEHBP participant. When the Board moved to dismiss the Association's petition for lack of subject matter jurisdiction, it was transmitted to an administrative law judge (ALJ), who issued an initial decision holding the Commissioner lacked jurisdiction over the dispute. The Commissioner reversed the ALJ's decision and remanded the matter for further proceedings. Upon the Board's interlocutory appeal the Appellate Division held, among other things: (1) the Legislature intentionally placed the health-plan equivalency provision in Title 18A, which grants the Commissioner broad authority to resolve disputes involving school laws; (2) while the Legislature had previously limited the Commissioner's jurisdiction by implementing certain carve-outs, it did not do so here; and (3) there are no other controlling regulations limiting the Commissioner's jurisdiction in this dispute.

Appellate Division upholds police officer's termination for testing positive for marijuana in random workplace drug test; rejects argument for reduced penalty in light of subsequent legalization of recreational use

In re Bomar, 2022 N.J. Super. Unpub. LEXIS 1939 (App. Div. Dkt. No. A-2815-20)

The Appellate Division of the Superior Court, in an unpublished opinion, affirms a final administrative action of the Civil Service Commission (CSC) affirming the removal of the appellant, Ms. Bomar, from her employment as a City of Orange police officer, after she tested positive in 2019 for marijuana during a random workplace drug screening. Concluding the City submitted sufficient, credible evidence that standard operating procedures were applied when Bomar's drug tests were performed, the Court found: (1) the CSC's decision was supported by the record and not arbitrary, capricious, or unreasonable; and (2) there was no basis in law or in the record to conclude Bomar's claim that progressive discipline, not termination, was appropriate given

the state's subsequent legalization of recreational use of marijuana and her lack of a prior disciplinary record; (3) because Bomar provided no specific reason as to how she could have unknowingly ingested marijuana, she did not present sufficient mitigating factors that would justify a reduction from termination; and (4) the sanction of termination for a positive drug test is well promulgated and was known to Bomar, and termination was well within the CSC's delegated authority.

Appellate Division affirms ineligibility for free health benefits in retirement for former State Police officer who lacked statutorily-required years of service

Meyers v. State Health Benefits Comm'n, 2022 N.J. Super. LEXIS 130 (App. Div. Dkt. No. A-0312-21)

The Appellate Division of the Superior Court, in a published opinion, affirms a final decision of the State Health Benefits Commission (SHBC) which ordered health care insurance premiums to be deducted from the monthly retirement payments of Mr. Meyers, a retired State Police officer, pursuant to Chapter 78, the State Health Benefits Program. The SHBC rejected the findings of an administrative law judge (ALJ) that Meyers, in connection with his early retirement and certain service time purchases, detrimentally relied on misinformation from the SHBC, among others, which led him to believe he would have free health benefits in retirement, and SHBC was equitably estopped from taking the deductions. SHBC found the ALJ overlooked pension literature in the record explicitly warning public employees, including Meyers, about the service time purchases at issue, and further found that erroneous written and oral misrepresentations by Division staff did not rise to the level of intentional misrepresentation; and the record did not support Meyer's detrimental reliance on such communications in retiring early. In affirming, the Appellate Division held: (1) because Meyers did not have twenty or more years of creditable service time as of June 28, 2011, he was not exempt from contributions under the applicable statutes; (2) under those statutes, Meyers' purchase of certain military service credits could not be applied retroactively to attain exemption eligibility; and (3) because Meyers was statutorily ineligible for free retirement health care benefits, an equitable estoppel analysis is not required.

Appellate Division upholds attorney's disqualification From police disciplinary matter based on conflict of interest

City of Englewood v. Pulice., 2022 N.J. Super. Unpub. LEXIS 2018 (App. Div. Dkt No. A-1930-20)

The Appellate Division of the Superior Court, in an unpublished opinion, affirms an order of the Law Division disqualifying an

attorney, Mr. Wunsch, over his representation of both a police lieutenant, Mr. Pulice, and the internal affairs officer, Mr. Doyle, who conducted an investigation into disciplinary charges leveled against Pulice by his employer, the City of Englewood. Wunsch also represented two fact witnesses in the case. Englewood accused Wunsch of ethics violations in his representation of fact witnesses and the target of the investigation, improperly representing Doyle, and failing to notify Englewood that he was in possession of confidential materials. The trial court ultimately agreed with Englewood and disqualified Wunsch "across the board" for his representation of Doyle, a member of Englewood's litigation control group. The Appellate Division rejected Wunsch's arguments on appeal that Englewood improperly based its cause of action on the Rules of Professional Conduct (RPC) and that the court lacks disqualification power under the relevant laws governing such disciplinary proceedings. The court found, among other things: (1) although the RPC, standing alone, cannot establish a cause of action for damages, no one sought damages in this case; (2) the disqualification sought by Englewood affects an ongoing New Jersey litigation, and our courts have a clear interest in protecting the integrity of proceedings within our borders; (3) no provision states the Superior Court's authority is limited to what is specifically set forth in the disciplinary statutes; and (4) Wunsch's simultaneous representation of Pulice and Doyle constitutes an unwaivable conflict under the RPC.

Police officers' appeal challenging unpaid leave imposed pursuant to township's COVID-19 vaccination and testing policy is dismissed for failure to exhaust administrative remedies

Funk v. Twp. of W. Orange, 2022 N.J. Super. Unpub. LEXIS 2167 (App. Div. Dkt No. A-1323-21)

The Appellate Division of the Superior Court, in an unpublished opinion, affirms a trial court's dismissal of a lawsuit filed by police officers employed by the Township of West Orange, who contended the Township violated N.J.S.A. 40A:14-147 (which governs removals/suspensions of municipal police officers) by placing them on unpaid leave pursuant to the Township's COVID-19 vaccination and testing policy. The officers appealed the trial court's dismissal of their complaint and denial of the requested back-pay relief. They then filed a major disciplinary appeal with the Civil Service Commission (CSC) seeking the same relief, and obtained a decision awarding back pay for the unpaid-leave period. The Appellate Division found: (1) the CSC had primary jurisdiction over the matter; (2) plaintiffs' initial failure to seek relief from the CSC and subsequent simultaneous pursuit of

relief with both the court and the CSC warranted dismissal of the appeal; and (3) no circumstances warranted relaxation of the rule requiring exhaustion of administrative remedies before seeking judicial relief.