



STATE OF NEW JERSEY  
PUBLIC EMPLOYMENT RELATIONS COMMISSION

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DATE: December 7, 2022  
TO: Commissioners  
FROM: Counsel Staff  
RE: Developments in Counsel's Office since November 22, 2022

**Commission Cases**

**Appeals from Commission Decisions**

No new appeals from Commission decisions were filed since November 22.

**Commission Court Decisions**

NJ Supreme Court reinstates PERC's decision allowing special disciplinary arbitration for university police officer

In re Diguglielmo, 2022 N.J. LEXIS 1108 (Sup. Ct. Dkt. No. A-33-21)

The Supreme Court of New Jersey (opinion attached), reverses 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), which held that NJIT officers are ineligible for special disciplinary arbitration because they are not officers who work for non-Civil Service

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municipal police departments. The Court unanimously held: (1) a plain reading of the relevant statutes dictates that special disciplinary arbitration is not limited to municipal officers, so arbitration is available to public university police officers like Officer DiGuglielmo; and (2) pursuant to N.J.S.A. 40A:14-210, an officer suspended with pay prior to termination is eligible to engage in special disciplinary arbitration. In so holding, the Court emphasized that while it is not bound by PERC's statutory interpretation, deference should be afforded to it as the agency charged with applying and enforcing the statutory scheme; and that the Court's holding was consistent with PERC's interpretation and administration of special disciplinary arbitration eligibility since the enactment of the 2009 amendments by which this form of arbitration was established. The Court reversed the appellate decision and reinstated the final agency determination (DA-2020-004) of the Commission's Director of Arbitration.

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

Appellate Division affirms Civil Service Commission's bypass of officers for county sheriff's officer sergeant positions

In re Errigo, 2022 N.J. Super. Unpub. LEXIS 2350 (App. Div. Dkt. No. A-3672-20)

The Appellate Division of the Superior Court, in an unpublished opinion, affirms a final agency decision of the Civil Service Commission (CSC) adopting the initial decision of an Administrative Law Judge (ALJ) to uphold appellants' bypass for the position of Sheriff's Officer Sergeant in Passaic County, and rejects Appellants's challenge to the CSC's decision to uphold Errigo's removal from the eligible list and its reversal of the ALJ's finding the County violated the "Rule of Three" (under which an appointing authority has the discretion to select any of the top three candidates). Affirming substantially for the reasons set forth in the CSC's decision, the Appellate Division held, among other things: (1) it was supported by sufficient credible evidence on the record as a whole; (2) the County justifiably bypassed the appellants, considering each officer's disciplinary history; (3) the County did not violate the Rule of Three in bypassing the officers; and (4) the court agreed with CSC's determination that one officer was considered a non-veteran for appointment purposes because he never requested nor received a veteran's preference.

Appellate Division affirms summary dismissal of principal's reverse discrimination claim against school district alleging unequal pay

Bento v. Plainfield Pub. Sch. Dist., 2022 N.J. Super. Unpub. LEXIS 2366 (App. Div. Dkt. No. A-2127-20)

The Appellate Division of the Superior Court, in an unpublished opinion, affirms the summary dismissal of plaintiff Bento's claims of race and gender discrimination brought against defendant Plainfield Public School District (District) under the New Jersey Law Against Discrimination (NJLAD), including the Equal Pay Act amendments thereto. At the time her complaint was filed, Bento was the only Caucasian principal in the District. She alleged the District violated the NJLAD by discriminating against her based on her race and gender by continuing to compensate her at the lower salary provided under Category C of the union-negotiated salary guide, rather than the higher salary paid to the high school principal under Category A. In summarily dismissing Bento's claim, the trial court recognized that while a Caucasian woman has a right to bring an action for race discrimination under the NJLAD, Bento did not satisfy the modified McDonnell Douglas test to establish a cause of action for disparity of income based on race or gender discrimination. In affirming, the Appellate Division found: (1) the negotiated salary guide was facially neutral and applied to all principals, whether male or female, Caucasian, African American, or Hispanic; (2) no evidence showed the salary guide was adopted for race- or gender-based discriminatory reasons; (3) the record supported that the District was not an unusual employer who discriminates against the majority; (4) no evidence showed a pattern of race or gender discrimination in the payment of District principals; and (5) the District provided legitimate, non-discriminatory reasons for the disparity in pay among its principals.