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DATR: March 20, 2024

TO: Commissioners

FROM: Counsel Staff

RE: Developments in Counsel's Office since February 29, 2024

Commission Cases

Appeals from Commission Decisions

No new appeals were filed since February 29.

Commission Court Decisions

No Commission court decisions were issued since February 29.

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

Appellate Division upholds dismissal of retired State Trooper's "failure to promote" lawsuit where he did not first pursue such claims through the collectively negotiated grievance procedure

Saul v. Div. of State Police, 2024 2024 N.J. Super. Unpub. LEXIS 261(App. Div. Dkt. No. A-0647-22)

The Appellate Division of the Superior Court, in an unpublished opinion, affirms the Law Division's orders granting defendants

State of New Jersey, Division of the State Police (NJSP), et al, summary judgment dismissing plaintiff Saul's claims with prejudice, and denying reconsideration. Saul, a retired State Police Sergeant, alleged NJSP's failure to promote him to the rank of Lieutenant prior to his retirement violated the NJSP's Operations Instruction policy. The Law Division judge found the grievance procedure in the applicable collective negotiations agreement (CNA) provided Saul a forum to bring his failure to be promoted claims, but he chose not to avail himself of that process. In affirming, the Appellate Division held, among other things: (1) Saul failed to establish a material issue of fact regarding the entitlement to consideration for the promotion; (2) he failed to demonstrate a dispute of fact regarding his requirement to pursue recourse under the CNA's established grievance procedure; (3) Saul was bound to the CNA's established policy and procedure for the submission and settlement of grievances of employees of the negotiating unit; and (4) Saul failed to establish the unavailability of recourse under the CNA to file a promotion-related grievance in accordance with the established process.

Appellate Division upholds Civil Service Commission's termination of police officer who tested positive for cannabis at work after secondhand inhalation at home

In re S.D., 2024 N.J. Super. Unpub. LEXIS 266 (App. Div. Dkt. No. A-2844-21)

The Appellate Division of the Superior Court, in an unpublished opinion, affirms a final agency decision by the Civil Service Commission (CSC), adopting an initial decision by an administrative law judge (ALJ), upholding S.D.'s termination as a police officer with the Township of Freehold Police Department (Department). S.D. was terminated on disciplinary charges after testing positive for cannabis following a random workplace drug test in 2020. He waived his right to a departmental hearing and appealed his termination directly to the Office of Administrative Law. S.D. did not challenge the testing process or the acquisition or chain of custody of the tested samples, but contended he tested positive as a result of secondhand inhalation caused by his wife's medically prescribed use of cannabis at home (specifically in the closed confines of their parked car where he accompanied his wife because she did not want to smoke alone, and so that their children would not see their mother smoking). The ALJ upheld the charges and recommended removal. That decision became final after the CSC was unable, due to a tie vote, to render a decision on S.D.'s subsequent motion to modify the

penalty imposed by the ALJ. In affirming, the Appellate Division found, among other things: (1) no error in the ALJ's decision to terminate S.D. for conduct unbecoming based on his positive drug test, which tended to destroy the public's trust regarding law enforcement officers who took an oath to uphold the law; (2) whether S.D. intentionally or unintentionally had cannabis in his system above the threshold level was irrelevant under the drug testing policies in effect in 2020; (3) based on the undisputed record, S.D. knew the policies related to controlled dangerous substances, including cannabis, and he knew a positive drug test would result in his termination; and (4) the absence of any prior disciplinary history did not diminish the fact that S.D., as a police officer, is held to a higher standard than other public employees.

Third Circuit enforces NLRB ruling against employers on charges of interference and retaliation for protected activity in connection with temp worker's discharge

Colart Americas Inc. v. NLRB, 2024 U.S. App. LEXIS 3961 (3d. Cir. Dkt. Nos. 22-3462, 23-1290 & 23-1299)

The Third Circuit Court of Appeals, in a non-precedential opinion, denies the employers' petition for review and grants a cross-application for enforcement of the National Labor Relations Board's (NLRB's) order ruling that Colart Americas Inc. (Colart) and Staff Management Group Inc. (SMG) (collectively, Employers) violated the National Labor Relations Act (NLRA) in connection with an unfair practice charge filed by a temporary worker, Hargrove, during his assignment by SMG to work at Colart's distribution center in Piscataway, New Jersey. Hargrove alleged the Employers violated the NLRA when: a supervisor, Trejo, spoke to workers about how they should bring complaints; and when Colart discharged Hargrove for his complaints of racism and other working conditions, and for threatening to go to the NLRB. Following a hearing before an administrative law judge (ALJ), the NLRB upheld the violations. In enforcing the NLRB's order, the Third Circuit held, among other things: (1) Trejo's statements (acknowledging workers' concerns about racism and mistreatment, telling them to follow the chain of command with their complaints, and threatening there would "be a problem" if they discussed complaints amongst themselves instead) constituted interference in violation of the NLRA, and substantial evidence supported the NLRB's decision; (2) the fact that Hargrove may have sought to personally benefit from his complaints or that he complained about personal concerns alongside group ones did not negate the group nature of the interests asserted, such that Hargrove's actions qualified as "concerted activity" protected by the NLRA; (3) substantial evidence supported the NLRB's decision

that Hargrove's protected activity was a motivating reason for his discharge, including that at least two decisionmakers knew about Hargrove's protected activity and the decision to discharge him was close in time to that activity; and (4) Colart's proffered legitimate reasons for the discharge were implausible or false.

Third Circuit affirms county sheriff's termination was not discrimination based on her political beliefs, sex, or in retaliation for complaining about illegal discrimination

Fritz v. County of Westmoreland, 2024 U.S. App. LEXIS 4469 (3d. Cir. Dkt. No. 22-2999)

The Third Circuit Court of Appeals, in a non-precedential opinion, affirms the District Court's dismissal of a lawsuit filed by Fritz, a former deputy sheriff for Westmoreland County, Pennsylvania, that alleged the County's firing of her was: discrimination based on her political beliefs, in violation of the First Amendment, and on the basis of her sex in violation of state and federal law; and retaliation for complaining about illegal discrimination. In affirming, the Third Circuit found Fritz: (1) failed to allege causation on her First Amendment claim because she offered no factual averments or information to support her "belief" that the County Commissioners were acting based on their or Fritz's political affiliation, and failed to show reconsideration of that claim was warranted; and (2) even assuming Fritz established a prima facie case on her remaining claims, the County provided a legitimate, non-pretextual reason for her termination, based on: (a) Fritz's altercation with a subordinate sheriff's deputy, which violated official workplace policies and resulted in criminal charges against Fritz; and (b) allegations against Fritz of racial discrimination in hiring decisions.

Appellate Division upholds arbitration award requiring health insurance benefit contributions from police retirees who did not qualify for years-of-service exemption under Chapter 78

Ridgefield Park PBA Loc. 86 v. Vill. of Ridgefield Park, 2024 N.J. Super. Unpub. LEXIS 340 (App. Div. Dkt. No. A-0930-22)

The Appellate Division of the Superior Court, in an unpublished opinion, affirms a trial court's order denying the PBA's application to vacate a grievance arbitrator's award that found the Village of Ridgefield Park did not violate the parties' CNA by requiring PBA retirees who were not "grandfathered" (i.e., who did not have twenty or more years of service on June 28, 2011,

the effective date of P.L. 2011, c. 78 (Chapter 78)) to pay a portion of their health benefit cost at the active employee level. The arbitrator interpreted CNA language stating all employees who retired on or after June 15, 2012, would receive the same benefits in retirement as active officers, and that the Village would pay in accordance with Chapter 78. In affirming, the Appellate Division held: (1) the trial judge correctly found the award conformed to a "reasonably debatable" interpretation of the CNA in light of Chapter 78; (2) the arbitrator's interpretation was plausible and did not create any new or ignore any clear provisions; and (3) nothing in the record demonstrated that the arbitrator made a mistake of law.

Appellate Division affirms suspension, not termination, was proper discipline for college maintenance worker's unauthorized taking of student's bicycle he mistakenly believed was abandoned

In re Peterson, 2024 N.J. Super. Unpub. LEXIS 343 (App. Div. Dkt. No. A-1487-22)

The Appellate Division of the Superior Court, in an unpublished opinion, affirms a final agency decision of the Civil Service Commission (CSC) that denied Stockton University's (SU's) motion to reconsider the CSC's decision to suspend —rather than terminate— Mr. Peterson from his job in SU's maintenance department. The CSC decision resolved an appeal from major disciplinary action on charges of unbecoming conduct/other sufficient cause stemming from Peterson's unauthorized removal from SU's campus of a bicycle that he believed was abandoned, but was later reported as missing by a student. This occurred in June of 2020 when campus was nearly empty due to COVID-19. Following a police investigation Peterson apologized, admitted he made a mistake, and paid the owner restitution. In affirming, the Appellate Division found the CSC's decision to downgrade the penalty to a 180-day suspension was consistent with progressive discipline where: (1) Peterson had an unblemished disciplinary record from the time he was hired in 2003 until the bicycle incident; and (2) his conduct was not so egregious under the circumstances as to warrant removal.