



**STATE OF NEW JERSEY
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VIA EMAIL ONLY

DATE: November 20, 2024

TO: Commissioners

FROM: Counsel Staff

RE: Developments in Counsel's Office since October 24, 2024

Commission Cases

Appeals from Commission Decisions

The Camden City School District filed an appeal from the Commission's decision, P.E.R.C. No. 2025-5, 51 NJPER 112 (¶27 2024), wherein the Commission found that the District illegally transferred a teacher between worksites for predominantly disciplinary reasons.

Oral argument is scheduled for December 2, 2024, in the matter of Watchung Hill Regional High School District Board of Education and Watchung Hills Regional Education Association, App. Div. Dkt. No. A-1151-23T4, in which the Board appeals a Commission decision, P.E.R.C. No. 2024-12, 50 NJPER 226 (¶50 2023), which found the Board violated the Act when it refused to meet and negotiate for a successor contract with the Association in the presence of the Association's "Bargaining Council" members. Oral argument is scheduled for December 3, 2024, in the matter of Rutgers, the State University of New Jersey and AFSCME Local 888, App. Div. Dkt. No. A-0277-23, in which Rutgers appeals a Commission decision, P.E.R.C. No.

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2024-2, 50 NJPER 127 (¶31 2023), denying Rutgers' petition for a restraint of binding arbitration of grievances filed by AFSCME Local 888, alleging Rutgers terminated without just cause the employment of two unit members following Title IX proceedings conducted by Rutgers.

Commission Court Decisions

No new Commission court decisions have been issued since October 24.

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

Appellate Division reverses \$490,000 jury award to Rutgers campus police officer for claimed due-process violations in connection with his disciplinary termination, finding his exclusive remedy for that claim was binding arbitration through CNA's grievance procedure

Fortney v. Rutgers, the State Univ. of N.J., 2024 N.J. Super. Unpub. LEXIS 2553 (App. Div. Dkt. No. A-3576-19)

The Appellate Division of the Superior Court, in an unpublished opinion, affirms in part, and reverses and remands in part, a jury verdict finding the University violated plaintiff Fortney's procedural due process rights under the New Jersey Constitution (when Rutgers terminated Fortney's employment as a campus police officer on disciplinary charges) and awarding him \$490,000 in backpay and emotional distress damages. In reversing the judgment on Fortney's due-process claim, the Appellate Division found, among other things: (1) Fortney's exclusive remedy for any claim the University violated procedural safeguards associated with discipline under the collective negotiations agreement (CNA) governing his employment was binding arbitration under the auspices of PERC; (2) Although Fortney and his Union initially resorted to the CNA's grievance procedure, the Union petitioned PERC to stay binding arbitration while the Union appealed the grant of Rutgers' scope petition in a similar case, P.E.R.C. No. 2015-8, 41 NJPER 101 (¶35 2014); (3) Following the Appellate Division's affirmance of PERC's decision, 2016 N.J. Super. Unpub. LEXIS 2050 (App. Div. 2016), the Union never reactivated its step 4 grievance on behalf of Fortney, thus never proceeding to binding arbitration of Fortney's due-process claim; (4) The Union and Rutgers bargained for an arbitrator to be chosen jointly from a list of ad hoc arbitrators provided by PERC to decide whether Fortney was entitled to the evidence supporting the charges against him at the pre-termination hearings and, if so, what should be the remedy, not a jury; and (5) Fortney had no right under the CNA, from which all his rights flowed, to bypass that procedure by filing a Superior Court action. The Appellate Division remanded for an entry of judgment for Rutgers on the due-process claim, and affirmed the trial judge's motion rulings dismissing Fortney's other claims.

Appellate Division, reversing Law Division’s imposition of 90-day unpaid suspension, reinstates disciplinary termination of borough police officer as initially recommended by hearing officer on disciplinary charges of egregiously unbecoming conduct by officer Fugnitti v. Borough of Ridgefield, 2024 N.J. Super. Unpub. LEXIS 2606 (App. Div. Dkt. No. A-1740-23)

The Appellate Division of the Superior Court, in an unpublished opinion, reverses a Law Division order that vacated a hearing officer’s recommendation that respondent Fugnitti be terminated from his employment as a police officer by respondent Borough of Ridgefield, and instead imposed a ninety-day suspension without pay. In reversing, the Appellate Division held that the Borough had ample reasons to seek Officer Fugnitti's termination: (1) He obtained the phone number of a vulnerable woman while on a service call and quickly engaged in sexual text messaging, which led to a sexual encounter; (2) This sexual encounter then led to rape allegations and an alleged extortion; and (3) The officer failed to report anything until it was evident his misconduct was revealed; (4) Fugnitti’s misconduct was unbecoming and egregious, occurred both on and off duty, and clearly violated Borough Code; and (5) progressive discipline was not appropriate given these serious infractions.

Third Circuit affirms city worker’s immediate termination after signing last-chance agreement “under duress” did not deny him due process, where worker did not appeal prior CSC order conditioning reinstatement from prior termination on his signing of last-chance agreement

Brentley v. City of Pittsburgh, 2024 U.S. App. LEXIS 28177 (Dkt. No. 23-3203)

The Third Circuit Court of Appeals, in a non-precedential opinion, affirms a District Court order dismissing Brentley’s pro se complaint against the City of Pittsburgh following the City’s second termination of Brentley’s employment in the public works department. After a dispute over whether he had to work a night shift, the City agreed not to terminate Brentley’s employment if he signed a “Last Chance Agreement” (LCA). Brentley refused and was terminated. Brentley then appealed to the Civil Service Commission (CSC). After a hearing the CSC reinstated Brentley’s employment, finding the City provided insufficient evidence for its defense that Brentley had not been terminated but quit his job. But the CSC conditioned Brentley’s reinstatement on his signing the LCA. Brentley signed the next day, but wrote “I am signing this Agreement under duress” above his signature. Because he wrote that note, his employment was terminated again, effective immediately. After his second termination, Brentley sued the City, alleging his procedural due process rights were violated because he was not afforded a hearing in the time between the issuance of the CSC’s reinstatement decision and his second termination. In affirming, the Third Circuit held: (1) Brentley could have appealed the CSC’s decision requiring him to sign the LCA in Pennsylvania state court, but did not do; (2) Brentley’s failure to take advantage of the process afforded to him under state law doomed his claim that the lack of a second hearing violated his procedural due process rights.