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November 13, 2014

TO: Commissioners
FROM: Counsel Staff
SUBJECT: Report on Developments in the Counsel's Office Since October 30, 2014

Commission Cases

No new appeals or court decisions.

Other Cases

Termination; Arbitrary Application of Failure to Meet Job qualifications

In re Annie Baker, Juvenile Justice Commission, 2014 N.J. Super. Unpub. LEXIS 2650

The Appellate Division of the Superior Court reverses, in part, a decision of the Civil Service Commission upholding the termination of a Juvenile Justice Commission (JJC) corrections officer because she failed to pass one of three aspects of firearms re-qualification. The Court noted that while the JJC could adopt a policy requiring job forfeiture for failing to pass weapons re-qualification, it had permitted officers, who were legally prohibited from even carrying weapons because of pending or sustained domestic violence offenses, to retain their jobs. The Court observed:

As Sergeant Baker noted, she missed re-qualification by four shots on one of three sections of the test for which she was cited for discipline and subject to termination, yet a corrections officer enjoined from possessing a weapon after commission of an act of domestic violence is possibly given an apparent special, indefinite assignment, without a service weapon. When the two circumstances are compared, the arbitrariness of such disparate treatment in the implementation of the same policy, requiring performance of all requisitions to maintain

employment as a corrections officer, is illuminated: both officers failed to re-qualify; the veteran officer, with an unblemished service record who struggles but falls short is terminated; yet the officer who commits one of the designated criminal offenses and found guilty of domestic violence, N.J.S.A. 2C:25-19(a)(1) to (14), is given an alternate, special assignment and keeps working.

The Court directs that, on remand, more evidence bearing on the application of the policy should be produced and that the JJC should insure that the consequences of not being qualified to use weapons should be administered equally.

Unlawful Termination: Nepotism, political affiliation, OPMA violation, whistle-blowing; civil rights

Berglund v. Gray, 2014 U.S. Dist. LEXIS 148091

Berglund, the Supervisor of Buildings and Grounds for the Deptford Township Board of Education, was discharged after he disciplined a subordinate for misconduct. The disciplined employee, who was the fiancée of the sister of a Board member, bragged that because of his connections, the discipline would not be implemented.

At a public meeting, a Board member, supported by two others, made a motion to terminate Berglund, who prior to assuming his job, had been a Board member. The motion was made without affording Berglund a Rice notice. At the next Board meeting Berglund was terminated leaving his job vacant. Berglund applied to get his job back. After an interview, the Superintendent and Business Manager both recommended that Berglund be rehired, but the Board declined to do so. In this decision, the U.S. District Court denies the Board members' motion to dismiss holding that: the complaint makes out arguable claims for violations of Berglund's civil rights; violation of the Open Public Meetings Act and; a violation of whistle-blower laws. It also holds that, given the facts alleged, the Board members can be sued in both their official and individual capacities.

Age Discrimination: Discriminatory act of County Sheriff imputed to County Freeholders

Garnes v. Passaic County, 2014 N.J. Super. LEXIS 144

The Appellate Division of the Superior Court affirms a jury verdict finding that Passaic County, its Sheriff's Department and the former Sheriff, violated the age discrimination sections of the Law Against Discrimination when it laid off an older, but lower paid, sheriff's investigator while retaining younger, but higher paid, investigators. This action was made while the County was undergoing a budget crisis. The Court holds that there is no significant difference in the proofs needed to sustain violations of either state or federal age discrimination statutes. It also holds that the discriminatory acts of the County Sheriff may be imputed to the County.