



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

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May 13, 2015

TO: Commissioners
FROM: Don Horowitz, Acting General Counsel
RE: Developments in the Counsel's Office Since April 20, 2015

Commission Cases

Twp. of Livingston v. Superior Officers Ass'n, 2015 N.J. Super. Unpub. LEXIS 1061

The Appellate Division of the Superior Court affirms the Commission's decision (P.E.R.C. No. 2014-66) restraining arbitration of a grievance filed by the Livingston Superior Officers Association. The grievance challenged the Township's adoption of a policy denying officers on terminal leave the opportunity to be assigned to extra work details.

New appeals

City of Newark and Superior Officers Association, H.E. No. 2015-8. A Hearing Examiner, in a consolidated unfair practice case grants summary judgment and finds that the City violated the Act, by repudiating a grievance decision issued by its Police Director. The decision settled and sustained grievances asserting the City violated its contract with the SOA concerning the amount and timing of lump sum payments due to retiring officers.

Madison Board of Education and Madison Education Association (no decision issued; tie vote in SN-2014-093 on grievance involving use of statutory leave).

Atlantic City and Atlantic City Prof FF IAFF Loc 198 P.E.R.C. No. 2015-063 (expedited scope of negotiations ruling issued by Chair on negotiability of contract language and proposals pending in interest arbitration proceeding)

Other Decisions

Replacement Teachers: Acquisition of Tenure

Bridgewater-Raritan Ed. Assoc. v. Bd. of Ed. of the Bridgewater-Raritan 2015 N.J. LEXIS 504

The Supreme Court addresses how time spent as a replacement teacher counts toward the acquisition of tenure. The Court affirms in part and reverses in part the decision of the Appellate Division of the Superior Court which had affirmed the Commissioner of Education's ruling that three District teachers had not achieved tenure status. The Supreme Court finds that the Board gave adequate notice to two of the teachers that their time as replacement teachers would not count toward tenure, but found that unresolved issues of fact existed regarding whether the third teacher was properly notified.

Authority to Appoint Acting Chief/Discipline Laws do not apply to Temporary Positions

Cox v. Blumenthal, 2015 N.J. Super. Unpub. LEXIS 1023

The Appellate Division of the Superior Court holds that a City Manager did not have the statutory authority to overrule the Chief's appointment of a Captain as Acting Chief. The Court also holds, that as Acting Chief is not a "permanent" position, removal from that post is not subject to the statutory disciplinary procedures of Title 40A.

At the beginning of his terminal leave, Brigantine's chief of police designated Cox, a police Captain as Acting Chief. While Blumenthal, the City Manager, was on vacation, Cox designated four supervisory officers to work "out of title" in higher positions. When she returned, Blumenthal rescinded those temporary promotions and stripped Cox of his designation as Acting Chief. Cox filed a lawsuit asserting that he had been improperly disciplined because the procedures set forth in N.J.S.A. 40A:14-147 et seq were not used. The Appellate Division reverses the lower court's ruling that those procedures were applicable. The Appellate Division holds that only the chief had authority to rescind Cox's appointment as Acting Chief, but ruled that the Chief's retirement date marked the end of the Acting Chief's term. It holds that the Acting Chief's entitlement to a pay differential ended on that date.