



STATE OF NEW JERSEY  
PUBLIC EMPLOYMENT RELATIONS COMMISSION

PO Box 429  
TRENTON, NEW JERSEY 08625-0429

[www.state.nj.us/perc](http://www.state.nj.us/perc)

ADMINISTRATION/LEGAL  
(609) 292-9830  
CONCILIATION/ARBITRATION  
(609) 292-9898  
UNFAIR PRACTICE/REPRESENTATION  
(609) 292-6780

*For Courier Delivery*  
495 WEST STATE STREET  
TRENTON, NEW JERSEY 08618

FAX: (609) 777-0089  
EMAIL: [mail@perc.state.nj.us](mailto:mail@perc.state.nj.us)

February 22, 2012

**MEMORANDUM**

**TO:** Commissioners

**FROM:** Counsel Staff

**SUBJECT:** Report on Developments in the Counsel's Office Since January 26, 2012

**Commission Cases**

The Supreme Court has declined to review Flemington-Raritan Bd. of Ed. and Flemington-Raritan Ed. Ass'n, P.E.R.C. No. 2011-28, 36 NJPER 363 (¶141 2010), aff'd 2011 N.J. Super. Unpub. LEXIS 1671, 37 NJPER \_ (¶\_ 2011), certif den. \_\_\_ N.J. \_\_\_, 2012 NJ LEXIS 136 (2012). The issue litigated on appeal was whether the union's grievance, asserting that the Board violated the contract by shifting the summer work of computer teachers to paid students, violated the parties' agreement. The Appellate Division affirmed the Commission's ruling that the issue was arbitrable and the Supreme Court will not review that determination.

The employer has appealed Atlantic City Board of Education, P.E.R.C. No. 2012-031, denying a request to restrain binding arbitration of a grievance seeking compensation for bilingual evaluations performed by a school psychologist and speech therapist.

The employer has sought appellate review in Atlantic City and PBA Local 24, SN-2011-009. The six Commissioners eligible to vote split 3-3 on the City's request to restrain arbitration of a grievance filed by the PBA, effectively denying that request.

## Other Cases

### Discipline

Township of Neptune v. AFSCME Council 73, et al., 2012 N.J. Super. Unpub. LEXIS 319

The Appellate Division of Superior Court confirms the award of grievance arbitrator Susan Osborne modifying a disciplinary sanction imposed on a Township employee from termination to a 30-day suspension. The employee, a purchasing agent with an unblemished employment record, submitted, apparently as a joke, a payment voucher seeking compensation for compensatory time. The court's opinion discusses at length and applies all statutory and judicial decisions establishing the preference for settlement of public sector disputes through grievance arbitration, the standard of review of and the deference due, grievance arbitration awards.

In the Matter of L.Y.V..v., Mount Holly Township, 2012 N.J. Super. Unpub. LEXIS 288

The Superior Court, Appellate Division affirms the Civil Service Commission's decision to modify the recommendations of Administrative Law Judge in a case involving the discipline of a police officer. The ALJ found that one of two disciplinary charges had been proven but recommended a six month suspension, rather than removal for the officer. The CSC increased the penalty to removal and the Court held that, as required by the Administrative Procedure Act, the CSC adequately explained its reasons for rejecting the measure of discipline recommended by the trier of fact.

Donald Degroot v. Linden Board of Education, 2012 N.J. Super. Unpub. LEXIS 199

The Appellate Division of the Superior Court remands, to resolve factual issues, the claim of a school administrator, not represented by the administrators union, that his written individual employment contract entitled him to be paid for unused sick and vacation leave in the manner set forth in the collective negotiations agreement between the Board and the majority representative of the administrators.

### Judicial control of municipal court appointments

Karen Brown, Esq. Vs. City of Paterson, et al. , \_\_\_ N.J. Super. \_\_\_ 2012 N.J. Super. Unpub. LEXIS 19

In a published decision concerning the limits of a municipality's power to create and appoint municipal judges, the Appellate Division of Superior Court upholds the grant of an injunction issued by a trial judge restraining Paterson from removing a part-time municipal judge from the bench. The City had sought the permission of the assignment judge to create an additional permanent part-time municipal court judge. It appointed Brown to the position but later terminated her, asserting she had a temporary appointment. The pertinent statute allows a municipality to request the approval of the Assignment Judge to create additional permanent

municipal judges or to appoint temporary judgeships, with terms not to exceed one year to meet needs of limited duration. The City made its request under the permanent portion of the statute and the judge served for more than one year.

### Promotion lists

Tempe, Pizzaia and Carloni v. Township of Edison, et al., 2012 N.J. Super. Unpub. LEXIS 257

The plaintiffs, volunteer fire fighters, applied for appointment as permanent fire fighters in Edison, a non-civil service municipality. Following the promotional process, the plaintiffs were ranked fifth, ninth and eleventh on the resultant list. A Township ordinance provided that appointments were to be made by order of position on the list. The Township did not appoint any of the plaintiffs before the initial expiration date but appointed six other candidates. The list was then extended and the Township re-interviewed the plaintiffs but made no additional appointments. With respect to the three plaintiffs, the Township asserted that one (as well as five other candidates who did not sue) had not maintained a required minimum response rate to calls as volunteers and, the other two plaintiffs had DUI convictions. In their lawsuit the rejected candidates urged that the Township be required to revive the list indefinitely, to appoint them from the list and to void other appointments for alleged conflicts of interest. The Court holds that the Township acted in accordance with statute and municipal ordinance and had the discretion to let the list expire and begin a new appointment process.