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April 23, 2012

MEMORANDUM

TO: Commissioners

FROM: Counsel Staff

SUBJECT: Report on Developments in the Counsel's Office Since March 21, 2012

Commission Cases

In the Matter of New Jersey Institute of Technology and FOP Lodge No. 93, 2012 N.J. Super. Unpub LEXIS ____ (App. Div. 2012)

The Appellate Division of Superior Court affirms N.J.I.T. and FOP Lodge No. 93, P.E.R.C. No. 2011-16, 36 NJPER 322 (¶125 2010) that dismissed, as untimely, a request to have the disciplinary termination of an NJIT police officer reviewed through binding arbitration, pursuant to N.J.S.A. 40A:14-209 and 210.¹ The Court also dismisses, as moot, NJIT's cross-appeal which had asserted that the statutory binding arbitration procedure applied only to municipalities and counties and not to a New Jersey public college or university.

Other Cases

Discrimination

Machado v. New Jersey Department of Corrections, 2012 N.J. Super. Unpub. LEXIS 719 (L. Div.)

Machado and Trent, both DOC employees, had filed sexual harassment claims against one another. Machado settled her claim, but Trent continued to pursue his claim, as well as gender

¹These laws allow non-civil service police and fire-fighters, terminated for disciplinary reasons not involving alleged criminal conduct, to have their firings reviewed by an arbitrator.

discrimination, Conscientious Employee Protection Act, defamation, civil rights and other claims against Machado, another employee, Mountainview Youth Correctional Facility and the DOC. A Superior Court Judge, noting that the facility and the employer had an effective, properly enforced anti-harassment policy in place at the time the alleged sexual harassment occurred, found no material issues of fact as to Trent's claims and granted summary judgment in favor of the two employees, Mountainview and the DOC.

Police officer candidate-psychological fitness

In the Matter of R.S., 2012 N.J. Super. Unpub. LEXIS 632 (App. Div. 2012)

R.S., an applicant for Montville's municipal police force, was found, following an examination, to be psychologically unfit for the job. On appeal by R.S., the Civil Service Commission conducted its own study and found R.S. to be fit for the job. Because of the disparate opinions, the CSC referred the issue to a medical review panel, which found R.S. fit and recommended that he be reinstated to the candidate eligibility list. The CSC found that the township had not met its burden of proof to show the candidate was psychologically unfit. The Appellate Division of Superior Court affirms, finding the referral to have been proper and that the conclusions of the panel are supported by the record and describes the members' reasoning in detail.

Discipline-Termination

In the Matter of Teel, 2012 N.J. Super. Unpub. LEXIS 667 (App. Div. 2012)

The Civil Service Commission upheld the termination of a clerical employee after four years of employment with the Mercer County Board of Social Services. She had received prior disciplinary sanctions before she was terminated for: an incident in a park involving a client of the board, use of the office telephone to make a threatening phone call, using profanity in the workplace and being insubordinate to her supervisor. An administrative law judge (ALJ) found the testimony of the other witnesses to be more credible than Teel's. The ALJ found Teel's actions unprofessional and recommended sustaining charges of conduct unbecoming a public employee. The Appellate Division of Superior Court affirms the agency ruling concluding that the ALJ's findings of fact are based on substantial credible evidence, and that the penalty of removal was not unfair.

Civil Rights — voting in general elections and union elections

Lopez-Arenas v. Zisa, 2012 U.S. Dist. LEXIS 37179 (D.N.J. 2012)

A federal district court judge dismisses most, but not all constitutional and statutory claims by a Hackensack Police officer against the deputy chief and two other superior officers. The officer alleges his First Amendment rights were violated when members of the department interfered with his right of free expression in voting in various state, municipal and union elections. He also

alleges discrimination by department members because he was deployed overseas with his National Guard unit. The court allows a federal civil rights claim and a state discrimination claim to proceed against a sergeant and lieutenant respectively, but dismisses all other claims.