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March 15, 2013

MEMORANDUM

TO: Commissioners
FROM: Counsel Staff
SUBJECT: Report on Developments in the Counsel's Office Since February 28, 2013

Commission Cases

New Appeals

The Communications Workers of America, AFL-CIO has appealed State of New Jersey and Council of New Jersey State College Locals, AFT and Communications Workers of America, P.E.R.C. No. 2013-52, , NJPER (¶ 2013). The Commission granted the employer's motion to dismiss the AFT's clarification of unit petition seeking to include within its existing unit a number of titles that had been excluded as "managerial executives" prior to the January 18, 2010 effective date of the amendment to N.J.S.A. 34:13A-3. The Commission held that N.J.S.A. 34:13A-3 is inapplicable because the individuals sought by the petition are not state employees, but are employees of the individual college boards of trustees due to changes in the state college system under N.J.S.A. 18A:64-20.

Other Cases

Sonja McKenna, et al. v. Board of Education of the Andover Regional High School District, 2013 N.J. Super. Unpub. LEXIS 435

Two child study team members employed by the Andover School District filed a petition with the Commissioner of Education asserting that the district's decision to abolish its in-house

CST program and have those services performed by the Sussex County Educational Services Commission and other third parties was illegal. The Commissioner dismissed the petitions concluding that the former CST teachers lacked standing. Without addressing the merits of the petitions, the Appellate Division of the Superior Court reverses the Commissioner's ruling as to one of the petitioners who is still employed. The court finds that as the other former CST teacher has retired, her claim cannot be maintained. And it rejects the district's claim that the petitions were not timely filed. The case is remanded to the Commissioner to rule on the merits of McKenna's petition.

In re Andriani, 2013 N.J. Super. Unpub. LEXIS 541

The Appellate Division of the Superior Court affirms the decision of the Civil Service Commission (CSC) to discipline a veteran police officer. Disciplinary charges were filed against a police lieutenant for causing a disruption while waiting to board an airplane at a Florida airport. At the time, the officer was on an unadjudicated suspension, but had a spotless disciplinary record during his prior 22-years of service. His employer, the City of Hoboken, sought his removal. The officer appealed to the CSC. An Administrative Law Judge dismissed some of the charges but sustained others. The ALJ recommended that, in light of the officer's prior exemplary service, the penalty be a 90-day suspension. The Civil Service Commission agreed, but increased the penalty to a 180 day suspension. Both the City and the officer appealed.

Hillside Firemen's Mutual Benevolent Association, et al. v. Mayor Joseph G. Menza, et al., 2013 N.J. Super. Unpub. LEXIS 506

In a case involving the respective jurisdiction of the Civil Service Commission (CSC) over municipal layoff plans and the jurisdiction of the Superior Court to issue declaratory rulings construing statutes governing municipal authority, the Appellate Division of the Superior Court holds that the Mayor of Hillside Township was not required to obtain the approval of the Township Council before submitting a layoff plan to the CSC. The appeals court holds that the Superior Court had jurisdiction to interpret the respective powers of the mayor and council under the particular Faulkner Act plan adopted by Hillside. However the higher court holds that the Superior Court misinterpreted the law and unduly limited the mayor's authority.

Montone v. City of Jersey City, 2013 U.S. App. LEXIS 4720

The United States Court of Appeals for the Third Circuit, overturns a lower court order that dismissed the retaliation claims of several Jersey City police sergeants (one of whom is now retired) who had sought promotions to lieutenant. The lawsuits, one brought by the retired female sergeant and the other covering active male sergeants, accused Jersey City police and government officials of retaliating against the officers based on the female officer's support of a political opponent of the mayor and her involvement in sexual harassment complaints while employed. The Court finds that summary judgment dismissing the lawsuits should not have been granted. It holds that the City's failure to promote anyone to lieutenant (while making

promotions in all other ranks), in order to avoid promoting the female sergeant who supported the mayor's political foe, impacted both her and the other sergeants' ability to obtain promotions.

Thomas v. Newark Police Dep't, 2013 U.S. Dist. LEXIS 31342

The United States District Court for the District of New Jersey holds that the Newark Superior Officers' Association (SOA) is not a "State actor" and cannot be sued by a Newark police officer under the federal civil rights act. The officer, a detective, was a witness to events connected with the fatal shooting of another Newark police officer. However, her court testimony that she did not see the defendant holding a gun was damaging to the state's case. An SOA publication questioned her testimony and criticized her. The court dismisses her suit against the SOA.