



**STATE OF NEW JERSEY
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June 16, 2010

MEMORANDUM

TO: Commissioners
FROM: Ira W. Mintz
General Counsel
SUBJECT: Report on Developments in the Counsel's Office Since May 26, 2010

Commission Cases

The Appellate Division has stayed the certification of a negotiations unit of State Police captains and remanded State of New Jersey (Div. of State Police), P.E.R.C. No. 2010-13, 35 NJPER 335 (¶114 2009), for a new hearing in light of the January 18, 2010 amendments to the definitions of managerial executives and confidential employees of the State of New Jersey.

Other Cases

In Nini v. Mercer Cty. Community College, __ N.J. __ (2010), the New Jersey Supreme Court held that the refusal to renew the contract of an employee over seventy years old, on the basis of age, is a prohibited discriminatory act under the New Jersey Law Against Discrimination (LAD).

In Linden Bd. of Ed., __ N.J. __ (2010), the New Jersey Supreme Court reversed an Appellate Division decision and reinstated an arbitration award. The parties had asked the arbitrator whether the Board had just cause to terminate the employment of a school custodian and if not, what shall be the remedy. The contract did not define just cause and the arbitrator found just cause to discipline, but not to terminate. Two judges of an Appellate Division panel interpreted the arbitrator's decision as having found that there was just cause to terminate the

employee and that therefore the arbitrator had no authority to consider other remedies. The dissenting judge concluded that the arbitrator's award should be confirmed. The Association appealed as of right based on the dissent in the Appellate Division. The Supreme Court disagreed with the two judges, stating that the agreement did not define just cause; the arbitrator properly filled in the gap and gave meaning to the term; the arbitrator concluded that progressive/corrective discipline was an integral part of the just cause concept; and the employee's misconduct was not so egregious to support just cause to terminate. The Supreme Court concluded that the arbitrator's determination satisfied the reasonably debatable standard.

In Jeannette v. West Essex Reg. School Dist. Bd. of Ed., App. Div. Dkt. No. A-1013-09T3, the Appellate Division affirmed a decision of the Commissioner of Education that had dismissed the appeal of the termination of a non-tenured custodian for lack of jurisdiction. The Commissioner stated “that resolution of the parties' dispute necessarily turns on the extent of their respective rights, and the propriety of their respective actions, as employer and employee under a collectively negotiated agreement -- determinations which the Commissioner of Education has no authority to make because such issues do not arise under the school laws notwithstanding that they occur in a school setting.”