



**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)

November 21, 2011

**MEMORANDUM**

**TO:** Commissioners

**FROM:** Counsel Staff

**SUBJECT:** Report on Developments in the Counsel's Office Since October 19, 2011

**Commission Cases**

An appeal has been filed by Salem Community College from the Commission's decision, P.E.R.C. No. 2012-013, declining to restrain arbitration of a grievance filed by the Salem Community College Faculty Association/NJEA. The grievance claims that the College violated the parties' collective negotiations agreement when it required an employee to take leave pursuant to the Federal Family Medical Leave Act, 29 U.S.C. ¶2601 at the onset of his sick leave.

**Other cases**

**Payment for Unused Leave/Township Administrator**

Pence v. Mayor & Twp. Comm. of Bernards Twp., 2011 U.S. App. LEXIS 22206 (3rd Cir. 11/2/2011)

Plaintiff served as Township Administrator from 1994 through 2004 when she was age 53. Because she had 10 years of service she was eligible for a deferred retirement at age 60. A year prior to Pence's retirement date, the Township changed its policy and notified Pence she was not eligible for payment for unused sick leave because she could not retire at the time she left employment. Distinguishing other cases involving school, municipal and county employees who have the right to receive payment for unused leave on retirement pursuant to statutes and/or contracts, the Court of Appeals holds that Pence had no constitutional right to receive such payments. Her position as a Township Administrator is a factor in the Court's ruling.

### **Employee Discipline/Free Speech**

In re Winters, 2011 N.J. Super. Unpub. LEXIS 2723 (App. Div. 10/21/2011)

An appeals court upholds a Civil Service Commission decision upholding a 60 day suspension of a fire captain and an order demoting him to fire fighter for disclosing, to a third party, a confidential report regarding alleged sexual harassment. The court reviews cases defining the free speech rights of public employees. It denies a claim that the third party, a former firefighter who now acts as a “gadfly” and has an anti-corruption talk show, was acting as a representative of the fire captain. The ruling does not affect a related case, argued before the Supreme Court, involving a claim that Winters’ termination violated the Conscientious Employee Protection Act (CEPA).

### **Employee Discipline/Forfeiture**

State of New Jersey v. Blessing, 2011 N.J. Super. Unpub. LEXIS 2762 (11/4/2011)

A public school teacher also served as the coach of a swim team at a private parochial school. In that capacity she engaged in inappropriate sexual conduct with a student. The teacher was convicted of criminal sexual contact and witness tampering. As part of her sentence the trial court imposed the penalty of forfeiture of the teacher’s public employment and barred her from future public employment. The Appellate Division overturns the forfeiture order agreeing with the teacher’s contention that permanent forfeiture of the right to hold public office was unwarranted because the offense in question did not "involv[e] or touch on [her] public office," as required by N.J.S.A. 2C:51-2(d).