



**STATE OF NEW JERSEY
PUBLIC EMPLOYMENT RELATIONS COMMISSION**

PO Box 429
TRENTON, NEW JERSEY 08625-0429

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

April 30, 2009

MEMORANDUM

TO: Commissioners

FROM: Ira W. Mintz
General Counsel

SUBJECT: Supplemental Report on Developments in the Counsel's Office Since March 26, 2009

Other Cases

In Leang v. Jersey City Bd. of Ed., ___ N.J. ___ (2009), the New Jersey Supreme Court held, among other things, that a non-tenured teacher whose employment contract was not renewed could not maintain a claim under the Contractual Liability Act, N.J.S.A. 59:13-1 to -10. School boards are statutorily authorized to sue and be sued and are therefore exempt from that Act. In addition, in light of the Board's clear statutory right to decline to renew plaintiff's contract, her breach of contract claim failed because that claim was based on the board's non-renewal decision. As with her breach of contract claim, plaintiff's due process claim was analyzed in light of the applicable statutory protections afforded to her. Upon plaintiff's receipt of the notification from the Board that her contract would not be renewed, she had a statutory right to request and receive a written statement of reasons for the Board's decision not to renew her contract. In addition, she had a statutory right to demand an "informal appearance" before the Board during which she would be permitted "to convince the members of the board to offer reemployment." The Court would not permit plaintiff to expand upon her statutorily-protected right to be heard by authorizing her to pursue a claim that she was in some way deprived of due process in the Board's non-renewal decision.

In Nini v. Mercer Cty. Community College, __ N.J. Super. __ (App. Div. 2009), the Appellate Division held that the over-seventy statutory exception to the New Jersey Law Against Discrimination, N.J.S.A. 10:5-4 to -49, should be interpreted to equate a contract nonrenewal with a termination and to bar an age-based nonrenewal. The LAD excepts those over 70 from protection in hiring and promotion, but not from protection against discriminatory terminations.

In New Jersey Transit Police Dept. v. Barroso, App. Div. Dkt. No. A-6287-06T1 (4/22/09), the Appellate Division reversed a determination of the Chief of the Transit Police that a police officer's conduct warranted his termination. Contrary to the Administrative Procedures Act, the Chief had rejected an Administrative Law Judge's credibility determinations without providing an explanation for doing so. The ALJ had found that the evidence did not support a finding of conduct unbecoming a police officer and the Court ordered the officer reinstated with mitigated back pay.