

## STATE OF NEW JERSEY PUBLIC EMPLOYMENT RELATIONS COMMISSION

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TO:

FROM:

Commissioners

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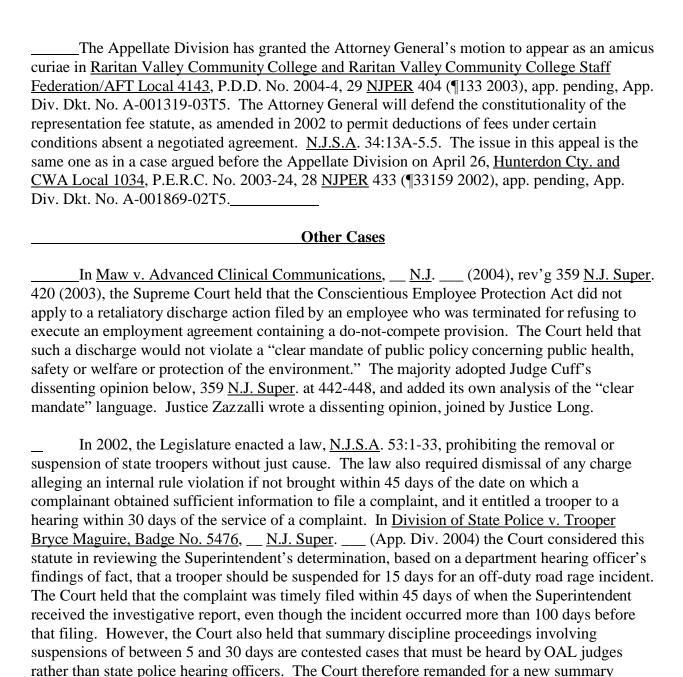
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May 20, 2004

## MEMORANDUM

	General Counsel
SUBJECT:	Report on Developments in the Counsel's Office Since April 29, 2004
	Commission Cases
The Appellate Division has affirmed the Commission's decision in <u>City of Trenton and Trenton Superior Officers Association</u> , P.E.R.C. No. 2002-70, 28 <u>NJPER</u> 243 (¶33092 2002), aff'd <u>NJPER</u> (¶ 2004), App. Div. Dkt. No. A-005865-01T3 (5/20/04) (copy attached). The Commission dismissed unfair practice charges asserting, in part, that the City discriminated against Joseph Constance for his activity as a TSOA official when it refused to promote him to acting police chief. The Court affirmed for the reasons stated in Hearing Examiner Roth's report and the Commission's decision.	
The employer has appealed the Commission's decision in <u>Piscataway Tp. and Piscataway Tp. PBA Local 93</u> , P.E.R.C. No. 2004-72, <u>NJPER</u> (¶2004). The Commission held that certain provisions of a promotional testing process were mandatorily negotiable. The mandatorily negotiable issues include the order of components in the process (e.g. written exam and oral interview) and withholding the results of the written exam until all parts of the process are completed.	
and Rutgers C pending. The	mployer has appealed the Commission's decision in <u>Rutgers</u> , <u>The State University</u> Council of <u>AAUP Chapters</u> , P.E.R.C. No. 2004-64, <u>NJPER</u> (¶ 2004), app. Commission held that certain portions of the University's patent policy were egotiable and other portions of the policy were not mandatorily negotiable.



In <u>Innella v. State of New Jersey (Division of State Police)</u>, App. Div. Dkt. No. A-5196-02T2 (5/4/04), an Appellate Division panel held that state troopers must appeal reprimands and accompanying minor suspensions (five days or less) to the Appellate Division rather than the Law Division. The troopers had challenged the reprimands and suspensions as allegedly violating their rights to prompt complaints and hearings under <u>N.J.S.A.</u> 53:1-33, but the Court held that their complaint really sought to reverse the decisions of the Division of State Police. The Court then reviewed the matter as if it had been brought to the Appellate Division directly

disciplinary hearing before an ALJ.

and concluded that the Division's decision was not final because the troopers could still pursue grievances or civil service remedies.

In Strickland v. Gloucester Cty., App. Div. Dkt. No. A-4366-02T1 (4/14/04), and Lindsay v. Gloucester Cty., App. Div. Dkt. No. A-4368-02T1 (4/14/04), the Court held that the County was entitled to summary judgment in actions where two former employees sought lump sum payouts of their accumulated, unused sick leave. One employee was laid off after 18 years of employment; the other employee was laid off after 9 years of employment. The collective negotiations agreement covering them provided that "upon retiring on pension, an employee shall be eligible for a one-time supplemental payment based on the number of unused sick days remaining to the employee's credit." The trial court granted summary judgment to the employees, finding that the agreement's ambiguous silence as to non-retirees should be construed as granting them a right to compensation for unused sick leave. The Appellate Division panel disagreed, concluding that the agreement plainly limited this benefit to retirees. The panel recognized that employee compensation upon termination is mandatorily negotiable under N.J.S.A. 34:13A-5.3 unless preempted.

In <u>Fields v. Thompson Printing Co., Inc., F.3d \_\_\_, 21 IER Cases</u> 149 (3d Cir. 2004), the Third Circuit Court of Appeals rejected a contention that public policy would be violated if a former corporate executive continued to receive contractual payments of salary and benefits after his discharge over allegations of sexual harassment. The allegations were settled out of court so the executive had not been found guilty of harassment and the contract did not contain a clause requiring forfeiture of salary or benefits given a termination for cause.

REA:aat
Attachment