



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

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DATE: November 17, 2021
TO: Commissioners
FROM: Counsel Staff
RE: Developments in Counsel's Office since October 28, 2021

Commission Cases

Appeals from Commission Decisions

No new appeals were filed since October 28.

Commission Court Decisions

No Commission court decisions were issued since October 28.

Non-Commission Court Decisions Related to the Commission's Jurisdiction

Appellate Division affirms Civil Service Commission's denial of State Trooper's salary overpayment waiver request; defers other arguments raised in appeal to related PERC grievance arbitration

In re Antenucci, 2021 N.J. Super. Unpub. LEXIS 2557(App. Div. Dkt No. A-2165-19)

The Appellate Division of the Superior Court, in an unpublished opinion, affirms a final decision of the Civil Service Commission (CSC) denying a State Trooper's request for waiver of a repayment of salary overpayment under N.J.A.C. 4A:3-4.21. The CSC found that the officer met one of three necessary conditions to qualify for a waiver (the overpayment was the result of an administrative error), but did not establish the other two: that he could reasonably have been unaware of the error; and that the terms of the repayment schedule would cause economic hardship. The Appellate Division found that the CSC's determination was not arbitrary, capricious or unreasonable, based on undisputed evidence in the record. The court found that other arguments raised by the officer in his appeal were not presented to the CSC and therefore were not properly before the court, but would be decided in a grievance arbitration currently pending before PERC.

New Jersey Supreme Court denies City of Jersey City's petition seeking appeal from appellate court's ruling requiring City to pay union members contractual double-time during 2018 weather-related state of emergency

Jersey City Public Employees, Inc., Local 245 v. City of Jersey City, 2021 N.J. LEXIS 998 (Sup. Ct. Dkt No. 085942)

The Supreme Court of New Jersey denied a petition for certification filed by the City of Jersey City seeking review of Jersey City Public Employees, Inc., Local 245 v. City of Jersey City, 2021 N.J. Super. Unpub. LEXIS 1018 (App. Div. Dkt No. A-4558-19), in which the appellate panel, overturning a PERC arbitrator's decision in favor of the City, ruled in favor of Jersey City Public Employees, Local 245, regarding its contractual claim for double-time pay during a 2018 weather-related state of emergency. The arbitrator found the disputed provision to be ambiguous, and construed it to require double time pay only when a state of emergency actually alters City operations and only to essential workers. The Law Division found the arbitrator's analysis to be reasonably debatable and confirmed it. The appellate court reversed and vacated the award, finding it was not reasonably debatable because the contract unambiguously provided that if the Governor declared a state of emergency, then City employees were entitled to double time pay; and its plain language did not refer to normal operations, distinguish between essential and non-essential workers, or require operations to be disrupted. The Supreme

Court's refusal to hear the case means that the Appellate Division's decision may potentially be relied upon to support similar claims by Local 245 and other public-sector unions (who may have similar language in their contracts) whose members have worked through the COVID state of emergency since March 2020.