



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

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Date: January 19, 2024

TO: Commissioners

FROM: Counsel Staff

RE: Developments in Counsel's Office since December 14, 2023

**Commission Cases**

**Appeals from Commission Decisions**

The Watchung Hills Regional High School District Board of Education filed an appeal from the Commission's decision, P.E.R.C. No. 2024-12, 50 NJPER 226 (¶50 2023), dismissing the Board's unfair practice charge alleging the Association violated the Act when it refused to negotiate for a collective negotiations agreement without the presence of its "Bargaining Council."

PBA Local 11 (Superiors) filed an appeal from a letter decision of the Deputy Director of Unfair Practices, Docket No. CO-2023-050, denying the PBA's motion to reopen an unfair practice complaint against the City of Trenton that the Hearing Examiner dismissed after determining the PBA had no interest in further processing the case, based upon its repeated failures to respond to PERC inquiries. In its charge, the PBA alleged the City violated the Act by responding to an official PBA communication in a "condescending, bellicose, and discordant" manner.

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## **Commission Court Decisions**

No Commission court decisions were issued since December 14.

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

Appellate Division affirms denial of common-law-right-of-access request for records relating to an applicant's appeal from his removal from eligibility list for municipal police officer post

Ass'n for Governmental Resp. v. Belin, 2023 N.J. Super. Unpub. LEXIS 2277 (App. Div. Dkt. No. A-3523-21)

The Appellate Division of the Superior Court, in an unpublished opinion, affirms a Law Division order denying a common law right of access request by the Association for Governmental Responsibility, Ethics and Transparency (AGREAT) for records from defendants, New Jersey Civil Service Commission (CSC), and its custodian of records. The records related to veteran Jeffrey DeSimone's appeal of his removal from Lakewood Township's (Township) eligibility list for the position of police officer. In affirming, the Appellate Division found that although the requested documents were public records under the common law, the appellants' interest in disclosure was outweighed by the detrimental effect such disclosure would have on the CSC's function by the diminution of information provided by applicants if confidentiality was no longer afforded.

N.J. Supreme Court affirms retired state trooper's ineligibility for exemption from Chapter 78 health care contributions in retirement

Meyers v. State Health Bens. Comm'n, 2023 N.J. LEXIS 1276 (S. Ct. Dkt. No. A-27)

The Supreme Court of New Jersey affirms an Appellate Division decision, 474 N.J. Super. 1 (previously reported in the November 2022 GC Report), which upheld a final decision of the State Health Benefits Commission (SHBC) ordering health care insurance premium contributions to be deducted from the monthly retirement payments of Mr. Meyers, a retired State Police officer, pursuant to Chapter 78 and the State Health Benefits Program. The Supreme Court affirmed substantially for the reasons stated by the Appellate Division: (1) because Meyers did not have twenty or more years of creditable service time as of June 28, 2011, he was

not exempt from contributions under the applicable statutes; (2) under those statutes, Meyers' purchase of certain military service credits could not be applied retroactively to attain exemption eligibility; and (3) because Meyers was statutorily ineligible for free retirement health care benefits, an equitable estoppel analysis of Meyers' alleged reliance on misinformation from the SHBC is not required.

Appellate Division vacates ethical reprimand of school board members for voting on the settlement of litigation in which they were personally involved, as they relied on advice of counsel

In re Roman, 2023 N.J. Super. Unpub. LEXIS 2379 (App. Div. Dkt. No. A-2858-21)

The Appellate Division of the Superior Court, in an unpublished opinion, reverses and remands a final decision of the New Jersey Commissioner of Education which reprimanded former Jersey City Board of Education members for violating a provision of the School Ethics Act (SEA) by voting to approve a global settlement of a federal lawsuit and an administrative action filed by the Jersey City Superintendent of Schools, actions in which the Board members were personally named. In reversing and remanding, the Appellate Division: (1) upheld the Commissioner's finding that under the relevant statute, the appellants acted in their official capacities on a matter where they had "a personal involvement that . . . create[d] some benefit" by releasing them from all claims and terminating their personal involvement; but (2) reversed and vacated the reprimand because the Board members satisfied all prerequisites to an advice-of-counsel defense when they sought the advice of the Board's counsel who "explicitly advised them that there was no ethical impediment to their voting on the matter or signing the settlement agreement."

Appellate Division affirms dismissal of "bad faith" challenge to layoff plan implemented by county sheriff's office

In re Alberto, 2023 N.J. Super. Unpub. LEXIS 2395 (App. Div. Dkt. No. A-0032-21)

The Appellate Division of the Superior Court, in an unpublished opinion, affirms a final agency decision of the Civil Service Commission (CSC) which upheld an administrative law judge's (ALJ's) ruling against former Bergen County police officers who brought a "Bridgewater" challenge to a layoff plan implemented by the Bergen County Sheriff's Office (BCSO). The police union withdrew a related unfair practice charge, filed with PERC, after the CSC and PERC matters were consolidated. The officers sought to invalidate the layoffs as allegedly motivated by anti-union animus and other improper motives. In affirming, the Appellate

Division held: (1) there was substantial evidence in the record to support the ALJ's credibility-based findings about the employer's lack of bad faith in implementing the layoff plan; (2) there was sufficient evidence, despite admitted instances of improper remarks and conduct by a BSCO sheriff, that the layoff was motivated by a genuine view of how to efficiently deliver police services in Bergen County; and (3) the CSC did not misapply its authority in adopting the ALJ's detailed findings. Separately, the Appellate Division made clear that its decision was without prejudice to the claims of individual employees who had accepted and relied upon a BCSO settlement offer that the BCSO revoked or withdrew after the ALJ issued his decision on the merits of the bad-faith layoff claim.

Appellate Division affirms dismissal of retired police officers' complaint seeking reimbursement of spousal Medicare Part B health benefit premiums

Connors v. Vill. of Ridgefield Park, 2024 N.J. Super. Unpub. LEXIS 26 (App. Div. Dkt. No. A-0256-22)

The Appellate Division of the Superior Court, in an unpublished opinion, affirms a Law Division order that dismissed with prejudice a complaint filed by retired Ridgefield Park police officers seeking to compel Ridgefield Park to reimburse their spouses' Medicare Part B premiums pursuant to retiree health insurance provisions in various collective negotiations agreements (CNAs) that referenced the State Health Benefits Plan (SHBP). In affirming, the Appellate Division noted that although Ridgefield Park apparently intended to join the SHBP, it never did so and instead provided health insurance to employees and retirees through other plans. The appellate court agreed with the trial court that any reference to the SHBP in the CNAs had no effect, and that even if the CNAs required insurance coverage comparable to the SHBP, the town nevertheless would not be compelled to reimburse spouses' premiums because this benefit is discretionary under the controlling statute.

Appellate Division affirms disciplinary suspension of correction officer for failing to respond to prisoner altercation

In re Turner, 2024 N.J. Super. Unpub. LEXIS 39 (App. Div. Dkt. No. A-2733-21)

The Appellate Division of the Superior Court, in an unpublished opinion, affirms a final agency decision of the Civil Service Commission (CSC) that adopted the initial decision of an

Administrative Law Judge (ALJ) that found appellant Turner, a Mercer County corrections officer, guilty of conduct unbecoming and neglect of duty, and upheld her eight-day disciplinary suspension for failing, while on break, to respond to code alerts indicating an altercation between inmates and an inmate in need of medical attention. In affirming, the Appellate Division held: (1) the ALJ's credibility and factual findings were supported by the record, including his rejection of Turner's "self-serving" testimony that she failed to respond due to a radio malfunction; and (2) despite her clean prior disciplinary record, Turner's eight-day suspension was not disproportionate given the seriousness of her misconduct, which jeopardized the physical safety of those correction officers who did respond to the altercation.