



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

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**TO:** Commissioners

**From:** Counsel Staff

**Subject:** Developments in Counsel's Office Since August 29, 2024

**Date:** September 18, 2024

**Commission Cases**

**Appeals from Commission Decisions**

The New Jersey Supreme Court denied the County of Essex's motion for leave to appeal (S. Ct. Dkt No. 089497) from In re County of Essex, 2024 N.J. Super. Unpub. LEXIS 811 (Dkt. No. A-3809-22), in which the Appellate Division affirmed the Commission's decision, P.E.R.C. No. 2023-60, 50 NJPER 43 (¶15 2023), on County police and fire unions' consolidated unfair practice charges alleging the County violated the Act when it unilaterally changed health insurance carriers. The Appellate Division's decision is considered interlocutory since a related matter is still pending at PERC. The County could petition the Supreme Court for certification once the pending matter is resolved.

### **Commission Court Decisions**

No new Commission court decisions have been issued since August 29.

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

U.S. Supreme Court overrules "Chevron" doctrine that required courts to defer to federal agencies' interpretations of laws they administer

Loper Bright Enterprises, et al. v. Raimondo, 144 S. Ct. 2244 (S. Ct. Dkt Nos. 22-451, 22-1219)

The Supreme Court of the United States, overruling decades of precedent set by Chevron, U.S.A., Inc. v. NRDC, Inc., 467 U.S. 837 (1984), holds that the federal Administrative Procedure Act requires courts to exercise their independent judgment in deciding whether an agency has acted within its statutory authority, and courts may not defer to an agency interpretation of the law simply because a statute is ambiguous. Previously, under the doctrine established by Chevron, courts were sometimes required to defer to "permissible" agency interpretations of the statutes those agencies administer—even when a reviewing court reads the statute differently. The Court's 6-3 decision was delivered by Chief Justice Roberts, joined by Justices Thomas, Alito, Gorsuch, Kavanaugh, and Barret. Thomas and Gorsuch filed concurring opinions. Justice Kagan filed a dissenting opinion, joined by Justices Sotomayor (in full) and Jackson (in part). The petitioners, family businesses that operate in the Atlantic herring fishery, challenged a D.C. District Court's ruling, upheld by the First Circuit, that relied on Chevron in granting summary judgment to the Government over its interpretation of a federal regulation affecting U.S. fisheries management. The Supreme Court granted certiorari on the limited question of whether Chevron should be overruled or clarified. In overruling, the Court vacated and remanded the judgments of the D. C. and First Circuits for further proceedings.

Third Circuit affirms dismissal of federal claims against Pennsylvania Commonwealth and union by former employee over his termination and the grievance proceeding that led up to it

Amaechi v. Dist. Council 89, 2024 U.S. App. LEXIS 19586 (Dkt. No. 22-2222)

The Third Circuit Court of Appeals, in a non-precedential opinion, affirms the judgment of a District Court in dismissing all federal claims by Amaechi against his former employer, the Commonwealth of Pennsylvania, and his former union, AFSCME, arising from the termination of his employment and the grievance proceedings and other events leading up to it. The District Court dismissed all claims for failure to state a claim upon which relief can be granted, and declined to exercise jurisdiction over any state law claims by Amaechi. In affirming, the Third Circuit held: (1) the District Court properly granted AFSCME's motion to dismiss Amaechi's federal constitutional claims against it because the union is not a "state actor" under 42 U.S.C. § 1983, and because Amaechi's allegations of a conspiracy between AFSCME and the Commonwealth defendants did not rise above the level of bare assertions, which are insufficient to state such a claim; (2) The District Court properly granted the Commonwealth defendants' motion to dismiss because Amaechi did not plead facts sufficient to support a claim for a deprivation of his due process rights, where Amaechi's claims did not put the grievance/arbitration procedure in question; and (3) because Amaechi had already twice amended his complaint, the District Court did not abuse its discretion in concluding that further amendment would be futile.

Appellate Division upholds CSC's dismissal of Hoboken employee for violating workplace restrictions after testing positive for COVID-19

In re Sanes, 2024 N.J. Super. Unpub. LEXIS 1925 (App. Div. Dkt. No. A-0885-22)

The Appellate Division of the Superior Court, in an unpublished opinion, affirms a final administrative decision of the Civil Service Commission (CSC) upholding an Administrative Law Judge's (ALJ) decision terminating Sanes' employment from the City of Hoboken for failing to comply with Hoboken's COVID-19 restrictions after testing positive for COVID-19. In affirming, the Appellate Division held, among other things: (1) because Sanes failed to provide any evidence explaining what specifically made the CSC's decision arbitrary, capricious, or unreasonable, there was no reason why the court should not accept the CSC's independent factual findings and legal conclusions; (2) despite direct instructions not to do so during the closures, Sanes

nevertheless entered City Hall using her status as an employee to gain access for personal reasons; and (3) in doing so, she not only disregarded instructions from her superiors but entered after recently testing positive for COVID-19, which jeopardized the health and safety of any employee she might have encountered.

Appellate Division upholds CSC's reinstatement of civilian police aide who was terminated for failing to follow procedures in connection with inmate's death at city jail

In re Ali, 2024 N.J. Super. Unpub. LEXIS 1944 (App. Div. Dkt. No. A-1585-22)

The Appellate Division of the Superior Court, in an unpublished opinion, affirms a final agency decision of the Civil Service Commission (CSC) adopting an Administrative Law Judge's (ALJ) initial decision that reversed the disciplinary termination of Ali's employment as a civilian police aide with the Plainfield Department of Public Affairs and Public Safety (Department) and awarded her back pay, seniority, and counsel fees. Ali's job required her to conduct periodic checks on detainees of the Department's jail. The Department charged Ali with failing to properly perform those duties "during the course of an in-custody death in the cell-block." Ali did not seek a departmental hearing, and the Department sustained the charges and terminated her employment. On appeal to the CSC, the ALJ found Ali's conduct prior to the death was consistent with training provided by the Department, which led police aides to believe they were allowed to skip the half-hourly face-to-face checks if they were busy with other duties as long as they wrote the reasons for doing so in their jail logs. The ALJ found it was not Ali's fault that these instructions contradicted the plain language of the governing regulation. Finding there was credible evidence in the record to support the CSC's decision to reinstate Ali, the Appellate Division held, among other things: (1) the Department's contention that the CSC should have disciplined Ali for making false jail log entries lacked merit; (2) the CSC recognized Ali stipulated that she time stamped the jail log at certain times, and did not perform face-to-face physical checks on the detainee, but the CSC correctly explained that there was no evidence that Ali admitted her time stamps indicated face-to-face checks were done; and (3) the record demonstrated that time stamping did not signify a police aide performed a face-to-face check on a jail detainee.

Appellate Division rejects non-permanent employee and her union's claims that state agency failed to properly provide employee with notice of reorganization and title change

In re McGee, 2024 N.J. Super. Unpub. LEXIS 2100 (App. Div. Dkt. No. A-1334-22)

The Appellate Division of the Superior Court, in an unpublished opinion, affirms a final administrative decision of the Civil Service Commission (CSC) that found: the appointing authority, the New Jersey Department of Environmental Protection (DEP), complied with CSC rules in providing notice to McGee's union, IBEW 30, of the DEP's reorganization plan and a change in McGee's title; McGee, as an unclassified employee of the DEP, was not entitled to notice of the reorganization or to CSC disciplinary procedures over her claim that she was demoted or otherwise disciplined based on her change of title. In rejecting the arguments of McGee and IBEW 30 on appeal, the Appellate Division held: (1) the appellants misperceived and misapplied the administrative regulations regarding notice to McGee as an unclassified employee, which only apply to permanent employees, and McGee offered no proof that as a senior employee she was unaware of the reorganization plan and that her title as an unclassified employee could be terminated at any time with or without cause; (2) the CSC appropriately considered and approved the reorganization, which resulted in McGee's change in title; (3) the CSC correctly determined appellants' claim regarding the contractual deprivation of cost-of-living increases should be pursued through the grievance process in the parties' collective negotiations agreement (CNA), which governs the terms and conditions of McGee's employment with the DEP; and (4) appellants failed to meet their substantial burden that the CSC's decision was arbitrary, capricious, and unreasonable.