



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

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**DATE:** January 24, 2025

**TO:** Commissioners

**FROM:** Counsel Staff

**RE:** Developments in Counsel's Office since December 12, 2024

**Commission Cases**

**Petitions for Certification**

Rutgers, the State University of New Jersey, filed with the Supreme Court of New Jersey a Petition for Certification from the December 13, 2024 judgment of the Superior Court, Appellate Division, In re Rutgers, 2024 N.J. Super. Unpub. LEXIS 3033, which affirmed a Commission decision. The General Counsel's office will file a brief in opposition to Rutgers' petition. The Appellate Division's decision is further detailed below under Commission Court Decisions.

**Appeals from Commission Decisions**

Cedar Grove Township Board of Education filed an appeal from the Commission's decision, P.E.R.C. No. 2025-15, 50 NJPER 288 (¶68 2023), which found the Board violated the Act when it

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unilaterally required employees to use sick leave and FMLA leave concurrently, without negotiating with the Association.

The Township of Mount Olive filed an appeal from the Commission's decision, P.E.R.C. No. 2025-16, 51 NJPER 166 (¶41 2024), which denied the Township's request for a restraint of binding arbitration of FOP Lodge 122's grievance challenging the disciplinary rescission of the grievant's Corporal designation.

Nathan Headd filed an appeal from the Director of Arbitration's final agency decision, DA-2025-002, granting the Township of Howell's motion to dismiss Headd's Petition for Appointment from the Special Disciplinary Arbitration (SDA) Panel appealing his termination as a police officer with the Township. The Director held that under the standards set forth in prior court cases interpreting the SDA statute, Headd was ineligible because the administrative charges against him equate to or are related to a criminal offense.

### **Commission Court Decisions**

The Appellate Division of the Superior Court, in an unpublished opinion, In re Rutgers, 2024 N.J. Super. Unpub. LEXIS 3033 (attached), affirms the Commission's decision, P.E.R.C. No. 2024-2, 50 NJPER 127 (¶31 2023), which denied Rutgers' petition for a restraint of binding arbitration of grievances filed by AFSCME Local 888 alleging Rutgers terminated without just cause the employment of two unit members following Title IX proceedings conducted by Rutgers. In affirming, the Appellate Division (addressing only one of the grievances as Local 888 withdrew the other after PERC's decision) agreed with PERC that the federal Title IX Regulations together failed "to demonstrate a preemptive intention or conflict precluding Local 888's independent grievance procedure under the CNA, which included a neutral review through binding arbitration of Rutgers' disciplinary sanction of a Local 888 member." The court further found that Local 888's grievance arbitration is limited to the grievant's termination for just cause and "does not nullify the Rutgers decision-makers finding that the grievant sexually harassed the complainant in violation of both the Rutgers Title IX Policy and University Harassment Policy." As noted above, Rutgers filed a Petition for Certification of this decision with the New Jersey Supreme Court, and PERC will be filing opposition to Rutgers' petition.

The Appellate Division of the Superior Court, in an unpublished opinion, In re the Matters of Watchung Hills Reg'l High Sch. Dist. Bd. of Educ., 2024 N.J. Super. Unpub. LEXIS 3095, affirms in part and vacates in part the Commission's decision, P.E.R.C. No. 2024-12, 50 NJPER 226 (¶50 2023) (attached), which dismissed the Board's unfair practice charge against the Association and sustained the Association's countercharge against the Board. The competing charges were filed after the Board refused to meet and negotiate for a successor contract with the Association in the presence of the Association's "Bargaining Council," which was open to all Association members. The Appellate Division upheld the Commission's dismissal of the Board's charge against the Association but vacated the unfair practice determination against the Board. In doing so the court noted that the question of whether reasonable restrictions may be placed on the number of union representatives who may participate in contract negotiations is not the subject of any PERC regulation or published judicial opinion. Thus, the court reasoned, "the Board did not act in bad faith in bringing this unsettled legal issue to the attention of PERC, just as the Association likewise did not act in bad faith by cross-moving for such a PERC determination." The Appellate Division otherwise endorsed PERC's admonishments in its decision to encourage parties to agree to reasonable ground rules or restrictions on the number of participants in the negotiations process. The court further urged PERC, going forward, to promulgate regulations that address such situations.

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

Appellate Division revives union's complaint seeking declaratory judgment that city's sick/injury leave policies violate NJLAD by discriminating against disabled firefighters

Jersey City IAFF Loc. 1066 v. City of Jersey City, 2024 N.J. Super. Unpub. LEXIS 3001 (App. Div. Dkt. No. A-0448-23)

The Appellate Division of the Superior Court, in an unpublished opinion, reverses a trial court's dismissal of IAFF Local 1066's complaint challenging Jersey City's policies that disqualify a firefighter who is on sick or injury leave from receiving a

promotion, and penalize firefighters for taking a certain amount of sick or injury leave within a year. The union sought a declaratory judgment that these policies violate the New Jersey Law Against Discrimination (NJLAD), alleging firefighters who take sick or injury leave are considered disabled. The trial court (without addressing the union's declaratory judgment request or the excessive leave policy) dismissed the complaint for failure to state a claim under the NJLAD, finding the union failed to establish the prima facie elements required for disability discrimination. In reversing and remanding for further proceedings, the Appellate Division held: (1) the trial court erred in dismissing the complaint for failure to state a claim, because the union was entitled to seek relief and challenge the policy's validity under the Declaratory Judgment Act, which the trial court did not address; and (2) the union alleged the promotion policy is facially discriminatory under the NJLAD, and presented sufficient evidence of direct discrimination and retaliation to survive the City's dismissal motion regarding the promotion policy.

Appellate Division affirms police officer's disciplinary termination for improperly conducting property checks and dishonesty during related internal affairs investigation

Bucci v. Twp. of Hamilton, 2024 N.J. Super. Unpub. LEXIS 3036 (App. Div. Dkt. No. A-0934-22)

The Appellate Division of the Superior Court, in an unpublished opinion, affirms a Law Division order upholding Bucci's disciplinary termination as a police officer with the Hamilton Township Police Department (a non-civil service employer), on disciplinary charges of conduct unbecoming and violation of departmental rules and regulations. The charges alleged Bucci did not properly conduct nineteen property checks and was untruthful about them during an internal affairs (IA) investigation. The Township adopted a departmental hearing officer's decision which sustained the charges based on the Department's detailed analysis of GPS records depicting the positioning of Bucci's patrol car, combined with Bucci's deceptive or untruthful statements during the IA investigation.

The hearing officer concluded Bucci's dishonesty was so egregious that termination was warranted, irrespective of his prior disciplinary history. After a 3-day de novo hearing, the trial court affirmed the hearing officer's findings and sustained Bucci's termination. In affirming, the Appellate Division held: (1) the trial judge made his own credibility findings and carefully considered and evaluated the record, thus he properly conducted a de novo review of the hearing officer's decision; and (2) the fact that Bucci provided fifteen years' service to the Department is of no significance considering his unbecoming conduct and violation of departmental rules and regulations.

Appellate Division affirms arbitration award finding housing authority lacked just cause to terminate a carpenter

Newark Hous. Auth. v. E. Atl. States Reg'l Council of Carpenters, 2025 N.J. Super. Unpub. LEXIS 25 (App. Div. Dkt. No. A-1169-23)

The Appellate Division of the Superior Court, in an unpublished opinion, affirms a Chancery Division decision confirming a final arbitration award in favor of Eastern Atlantic States Regional Council of Carpenters, Local 253 (Council), which found that the Newark Housing Authority did not have just cause to terminate a Council member and carpenter, Sims, and ordered that she be reinstated and reimbursed for lost wages and benefits. In affirming, the Appellate Division first noted the parties had agreed that the arbitrator could determine "just cause" in the absence of a specific definition of that term in the CNA. The court found reasonably debatable the arbitrator's just-cause interpretation, which rejected the Housing Authority's position that it had just cause to terminate Sims because she was physically unable to perform her job as carpenter due to a medical condition. The arbitrator found that because Sims' medical condition (keeping her from working without restrictions) was temporary and would resolve, she could eventually return to work and should not have been terminated. The Appellate Division further found that the arbitrator appropriately relied on outside factors, including the

temporality of Sims' medical leave, the Housing Authority's failure to warn Sims about her potential discharge, and Sims' entire record with the agency.

Appellate Division reinstates grievance arbitration award in favor of State corrections officers in dispute over uniform-allowance pay

State v. Policemen's Benevolent Ass'n, 2025 N.J. Super. Unpub. LEXIS 75 (App. Div. Dkt. No. A-1091-23)

The Appellate Division of the Superior Court, in an unpublished opinion, reverses and vacates a trial court's order, and reinstates a grievance arbitration award in favor of PBA Local 105, in a dispute over a decision by the State of New Jersey (Dept. of Corrections) to pay a contractual uniform allowance to PBA 105 officers on their bi-weekly payday rather than in a supplemental payday in July that was a longstanding sixteen-year past practice. This change resulted in additional state taxes being withheld than if the allowance was paid as a supplement. The arbitrator concluded the State violated the CNA and directed it to reimburse each affected member the difference between what they received as their bi-weekly uniform allowance payment and what they should have received as a stand-alone payment on a supplemental payday. The arbitrator limited the reimbursement to PBA 105 members who had not already received a refund for excess state tax withholding related to this matter. The Law Division granted the State's subsequent request to vacate the award. It found the remedy was procured by undue means and a mistake of fact because PBA 105 members suffered no financial harm, reasoning that any members who had a higher amount of state taxes withheld would ultimately receive a credit or refund against their year-end tax liability. The Law Division found this remedy essentially acted as a penalty against the State, and thus exceeded the arbitrator's authority. In reinstating the award, the Appellate Division held, among other things: (1) the award was a reasonably debatable interpretation of the CNA based on the evidence presented at the arbitration hearing; (2) there was no error in the arbitrator's "make-whole" remedy that was consistent with his authority as vested by the CNA; (3) the

arbitrator correctly limited the remedy by affirmatively excluding any PBA 105 member who already received a related state tax refund; and (4) the award did not violate existing law or public policy.