



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

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DATE: February 19, 2025

TO: Commissioners

FROM: Counsel Staff

RE: Developments in Counsel's Office since January 30, 2025

Commission Cases

Appeals from Commission Decisions

James MacCarthy filed an appeal from that part of the Commission's decision, P.E.R.C. No. 2025-21, 51 NJPER 186 (¶47 2024), which found the Eastampton Education Association did not violate its duty of fair representation by filing workplace discrimination complaints against MacCarthy, an Association member, on behalf of another Association member. Addressing cross-motions for summary judgment, the Commission also dismissed MacCarthy's charge that the Association did not provide him a union representative during a disciplinary investigation, while sustaining MacCarthy's charge that the Association prohibited him from seeking union elected office because he filed the unfair practice charge.

The Union Township Board of Education filed an appeal from the Commission's decision, P.E.R.C. No. 2025-23, 51 NJPER 193 (¶49 2024), which found the Board violated the Act when it

unilaterally changed the payroll scheme, resulting in federal income taxes not being withheld from stipend compensation of Union Township Education Association members, without notice to the affected members.

Commission Court Decisions

No new Commission court decisions have been issued since January 30.

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

Appellate Division finds school board members' email logs on their personal computers discussing board business are government records disclosable under OPRA

Rosetti v. Ramapo-Indian Hills Reg'l High Sch. Bd. of Educ., 2025 N.J. Super. LEXIS 8 (App. Div. Dkt. No. A-1466-23)

The Appellate Division of the Superior Court, in a published opinion and a case of first impression under the Open Public Records Act (OPRA), reverses and remands a trial court order which denied plaintiff Rosetti's OPRA request of defendants Ramapo-Indian Hills Regional High School Board of Education seeking the disclosure of email logs of past and current Board members' personal computers discussing Board business. In reversing, the Appellate Division held: (1) the email logs on private servers are government records and are disclosable under OPRA; (2) on remand, the Board members must search their personal email accounts to determine if the sought-after email logs are available and, if they determine they are unavailable or there are burdens in producing them, they must produce Paff I certifications¹; (3) After giving Rosetti the opportunity to respond, the trial judge must then decide if a fact-finding hearing is necessary; (4) the court must be satisfied the parties made good faith efforts to reasonably resolve their dispute; and (5) after this process occurs, the court must decide if production of the email logs should be provided, or if it would be too burdensome to provide.

¹ These are sworn statements by government personnel stating and setting forth steps taken in response to the OPRA request as required by Paff v. New Jersey Dep't of Labor, 392 N.J. Super. 334, 341 (App. Div. 2007) (Paff I).

Appellate Division holds city cannot compel firefighter plaintiffs to pursue class action wage/hour claim in arbitration where CNA's grievance arbitration clause lacked clear, unambiguous waiver of right to seek judicial remedies

Evans v. City of Paterson, 2025 N.J. Super. Unpub. LEXIS 139 (App. Div. Dkt. No. A-1818-23)

The Appellate Division of the Superior Court, in an unpublished opinion, reverses trial court orders which granted the defendant City of Paterson's motion to dismiss and compel arbitration of a class action complaint filed by plaintiffs (City firefighters) alleging certain terms of the City's collective negotiations agreement (CNA) with the Paterson Firefighters Association (Association) violate their statutory rights under the New Jersey Wage and Hour Law (WHL), and denying plaintiffs' subsequent motion for reconsideration. The plaintiffs are Association members. The trial court concluded their claims related to the interpretation or application of the CNA and that plaintiffs were thus bound by the CNA to submit those claims "to binding arbitration before the [sic] PERC." In reversing and remanding for further proceedings, the Appellate Division held, among other things: (1) the CNA's arbitration clause does not contain a clear and unambiguous waiver of plaintiffs' right to seek judicial remedies and is thus unenforceable; (2) whether the CNA's arbitration provision contains such a clear and unambiguous waiver of rights is a question of contract interpretation appropriate for the courts, not PERC; and (3) plaintiffs were not required to exhaust the administrative remedies available to them prior to filing their complaint.

Appellate Division reverses trial court order that reformed police officer's irrevocable resignation agreement with township in manner that violated the pension laws

King v. Barnegat Twp., 2025 N.J. Super. Unpub. LEXIS 147 (App. Div. Dkt. No. A-3881-22)

The Appellate Division of the Superior Court, in an unpublished opinion, reverses a trial court's grant of summary judgment to King and remands for an order granting summary judgment to Barnegat Township, and dismissing King's complaint that the Township breached its contract relating to his resignation from employment as a Township police officer. Although the separation agreement was entered after the Township brought disciplinary charges against King, it specified: King was medically disabled and was irrevocably resigning in good standing; the Township

would file for an involuntary ordinary disability retirement for him; and if King was granted same and his disability vanished or materially diminished within five years, he would be reinstated without compensation and would resign within thirty days. The pension board rejected the application based upon the agreement's "resignation-upon-return provision," finding it defeated the intent of relevant pension laws because King could not meaningfully return to work as required by statute were he to be rehabilitated from his disability, and the board would also have no mechanism to cancel his retirement allowance because the separation agreement prevented King from returning to active service. The Township thereafter refused King's request to modify the agreement to remove those provisions. King then sued the Township, eventually obtaining a court order reforming the agreement by severing the disputed provisions from it, and declaring the Township breached the agreement by not doing so. In reversing and rejecting the trial court's view that the pension board found the provisions to be "unenforceable", the Appellate Division held, among other things: (1) the pension board did not accept King's application precisely because those provisions are enforceable and preclude him from fulfilling the pension law's return to work requirement; (2) because no provision of the agreement was declared unenforceable by the board, the contract's severance provision was not triggered; and (3) the agreement in its original form does not require the Township to permit King to return to work as a police officer should he be rehabilitated from his disability, and it was thus error for the motion court to revise the terms of the contract.

Appellate Division affirms removal of county sheriff's officer from lieutenant promotional list based upon disciplinary history

In re Zirrith, 2025 N.J. Super. Unpub. LEXIS 16175 (App. Div. Dkt. No. A-0447-23)

The Appellate Division of the Superior Court, in an unpublished opinion, affirms the Civil Service Commission's (CSC's) final agency order affirming the Middlesex County Sheriff's Office's decision to bypass Zirrith and remove her from the list of candidates eligible for appointment to the rank of lieutenant, along with the CSC's order denying reconsideration. In affirming, the Appellate Division held: (1) the provisions of a collective negotiations agreement (CNA) did not limit the CSC from considering discipline records removed from a personnel file

in determining whether candidates are eligible for promotion, especially to a high-level law enforcement position; (2) the employer's decision to bypass Zirrith and her removal from the list by the CSC based on her disciplinary history was not arbitrary, capricious, or unreasonable; (3) the CSC did not err in finding that Zirrith's major discipline in 2012 (wherein she admitted untruthfulness about the location of her duty weapon) alone substantiated bypass and removal from the Eligible List; and (4) Zirrith's perceived procedural defect in her removal from the Eligible List did not warrant a ruling in her favor.

Appellate Division affirms trial court orders temporarily enjoining school boards from implementing student gender identity policies that required mandatory parental notification

Platkin v. Hanover Twp. Bd. of Educ., 2025 N.J. Super. Unpub. LEXIS 203 (App. Div. Dkt. No. A-0371-23);
Platkin v. Middletown Twp. Bd. of Educ., 2025 N.J. Super. Unpub. LEXIS 205 (App. Div. Dkt. Nos. A-0037-23, A-0046-23, A-0118-23)

The Appellate Division of the Superior Court, in unpublished opinions, affirms Chancery Court orders preliminarily restraining school boards from implementing policies that changed how school staff would address students' gender identifications, while the merits of a dispute over whether that policy change violated the New Jersey Law Against Discrimination (LAD) were addressed in administrative proceedings, initiated in 2023 by the New Jersey Attorney General, before the State's Division on Civil Rights (DCR). The existing policies generally followed 2018 guidance from the New Jersey Department of Education which stated that school districts should accept a student's asserted gender identity without requiring parental consent. In 2023 the school boards amended the policies to require parental notification whenever school staff became aware of a student's asserted gender identity or gender-transition status, based upon the possibility that this was an "indicia of an adverse impact on the student's physical and/or mental health, safety and or social/emotional well-being" (Hanover), and singled out only students who identify as transgender for mandatory parental notification (Middletown). The trial court in Hanover temporarily enjoined the board from implementing the revised policies until the resolution of the pending DCR action. The trial court in Middletown (consolidated on appeal with similar cases in Manalapan and Marlboro), temporarily enjoined the boards from changing their existing

policies or considering alternative new ones. In both Hanover and Middletown, the Appellate Division affirmed the orders enjoining the boards from enacting the amended policies, based upon the Attorney General satisfying the Crowe standards for a grant of injunctive relief on a disparate-impact LAD claim. The Appellate Division reversed the order prohibiting the Middletown boards from considering alternative policies. In both matters the Appellate Division stressed that its affirmance of the preliminary injunctions did not preclude the boards from moving to lift or modify them if the DCR proceeding was "not prosecuted and resolved in a timely manner."

Appellate Division affirms bypass of firefighter on promotional list for captain based upon lack of vacancies when list expired

In re Cologna, 2025 N.J. Super. Unpub. LEXIS 229 (App. Div. Dkt. No. A-0352-23)

The Appellate Division of the Superior Court, in an unpublished opinion, affirms a final administrative action by the Civil Service Commission (CSC), denying Cologna's promotion to fire captain in the City of Hoboken. A disabled veteran, Cologna argued he was improperly bypassed for promotion because he was first on the certification list and there were genuine vacancies for which he was eligible. The City made no appointments from the promotional list that Cologna was on, because when that list expired there were no genuine vacancies to be filled, and the City was not authorized to extend the eligibility certification to appoint Cologna to fill vacancies anticipated to arise later that year. The Appellate Division affirmed the CSC's decision, finding the City properly followed the regulation governing the expiration of promotional lists.