



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

PO Box 429  
TRENTON, NEW JERSEY 08625-0429

[www.state.nj.us/perc](http://www.state.nj.us/perc)

ADMINISTRATION/LEGAL  
(609) 292-9830

CONCILIATION/ARBITRATION  
(609) 292-9898

UNFAIR PRACTICE/REPRESENTATION  
(609) 292-6780

*For Courier Delivery*  
495 WEST STATE STREET  
TRENTON, NEW JERSEY 08618

FAX: (609) 777-0089  
EMAIL: [mail@perc.nj.gov](mailto:mail@perc.nj.gov)

**DATE:** March 19, 2025

**TO:** Commissioners

**FROM:** Counsel Staff

**RE:** Developments in Counsel's Office since February 27, 2025

**Commission Cases**

**Appeals from Commission Decisions**

The Appellate Division issued an Order of Dismissal of the Union Township Board of Education's appeal from the Commission's decision, P.E.R.C. No. 2025-23, 51 NJPER 193 (¶49 2024), finding it was interlocutory. The Commission found the Board violated the Act when it unilaterally changed its payroll scheme without notice to affected members of the Union Township Education Association, and federal income taxes were not withheld from stipend compensation. The Commission granted the Association's summary judgment motion and referred the matter for a hearing to determine damages.

Oral argument is scheduled for March 27, 2025, in the Paterson Fire Officers' Association's appeal from the Commission's decision, P.E.R.C. No. 2024-41, 50 NJPER 360 (¶86 2024), which affirmed an interest arbitration award, IA-2024-002, that settled successor contract negotiations between the City of Paterson and the PFOA.

### **Commission Court Decisions**

No new Commission court decisions have been issued since February 27.

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

Appellate Division upholds 60-day suspension of police officer for misconduct in apprehending suspect with taser

In re Dadura, 2025 N.J. Super. Unpub. LEXIS 271 (App. Div. Dkt. No. A-0173-23)

The Appellate Division of the Superior Court, in an unpublished opinion, affirms a final order of the Civil Service Commission (CSC) imposing a sixty-working-day suspension penalty against police officer Dadura by his employer, the City of Wildwood. The CSC adopted an ALJ's findings but modified his 30-day suspension recommendation to conform with the employer's final notice of disciplinary action. In affirming, the Appellate Division held the 60-day penalty reinstated by the CSC was not unfair in light of the nature of Dadura's misconduct and the proofs before the CSC. This included body camera footage establishing that Dadura violated several WPD procedures through driving a police vehicle down the street while pointing a taser out the window at a fleeing suspect and by using foul language unbecoming of an officer when attempting to arrest the suspect. Dadura also had prior disciplines for similar misconduct regarding the use of a taser. The Appellate Division found the CSC properly considered the totality of Dadura's work performance, including all prior infractions.

Appellate Division affirms ineligibility for free health care benefits in retirement of township police officer with less than 20 years' creditable service as of June 28, 2011

Township of Green Brook v. PBA Loc. 398, 2025 N.J. Super. Unpub. LEXIS 268 (App. Div. Dkt. No. A-0853-23)

The Appellate Division of the Superior Court, in an unpublished opinion, affirms a Chancery Division order vacating in part and affirming in part a grievance arbitration award involving a

contractual dispute between the Township of Greenbrook and PBA Local 398 over retiree healthcare benefit contributions under Chapter 78. The Chancery Division found the arbitrator exceeded his authority by ordering the Township to provide free health care benefits to one PBA member (Skikus) upon his retirement because he lacked the required twenty years of service as of June 28, 2011 (Chapter 78's effective date). The Chancery judge affirmed the arbitrator's decision to remand for further negotiation the health care benefits contributions for retirees with less than twenty years of service as of June 28, 2011. In affirming, the Appellate Division held: (1) the trial court properly applied the plain language of the law requiring a retiree to have twenty years of service as of June 28, 2011, for free health care benefits; (2) the arbitrator erred in applying equitable estoppel to preclude the Township's collection of health care benefits premiums from Skikus, because he was statutorily ineligible to receive free benefits despite the Township's initial mistake in providing them; and (3) the arbitrator's decision to remand to the parties for negotiation was reasonably debatable because the CNA did not indicate what amount retirees are to pay for their health insurance premiums.

Appellate Division overturns grievance arbitration award of time-and-a-half plus regular pay for school custodians who worked during COVID-19 emergency, finding award conflicted with COVID-era law mandating regular pay only

E. Orange Educ. Support Professionals' Ass'n v. E. Orange Bd. of Educ., 2025 N.J. Super. Unpub. LEXIS 282 (App. Div. Dkt. No. A-3657-21)

The Appellate Division of the Superior Court, in an unpublished opinion, reverses a Chancery Division order which confirmed a grievance arbitration award of extra compensation (one-and-a-half times regular pay, plus regular pay) to custodial employees of the East Orange Board of Education who reported to work when school facilities were closed to students during the COVID-19 state of emergency. The Appellate Division remanded for entry of an order vacating that aspect of the award, which was based on a contractual provision entitling custodial employees to extra compensation when they work on days when "schools are closed for an emergency." The Appellate Division found the award conflicted with the public policy embodied in a statute enacted at the start of the COVID-19 state of emergency, N.J.S.A. 18A:7F-9(e)(1), which provided that when school facilities are closed for an extended period due to a state of emergency, school employees shall be compensated "as if the school facilities remained open

for any purpose.” Because the award was directly contrary to this statute, the court found it was not reasonably debatable.

After remand, Appellate Division affirms trial court’s reinstatement of sewerage authority commissioner who had been removed for sending an offensive Facebook message, finding it was “private misconduct” unrelated to his public office

Maloney v. Borough of Carlstadt, 2025 N.J. Super. Unpub. LEXIS 334 (App. Div. Dkt. No. A-1438-23)

Following a remand, the Appellate Division of the Superior Court, in an unpublished opinion, affirms a trial court’s second grant of summary judgment reinstating Maloney to his position as a commissioner with the Borough of Carlstadt’s Sewerage Authority after the Borough removed him for posting a pornographic message in a Facebook group that included other Borough officials. In a prior opinion (detailed in the August 2023 General Counsel’s Report) the Appellate Division reversed the trial court’s first summary judgment decision (reinstating Maloney because the removal decision was erroneously based on a Borough ordinance) and remanded to the judge to address whether Maloney committed misconduct in office under the governing statute, N.J.S.A. 40:14A-5(c). On remand, the trial court found Maloney’s actions were unrelated to his role as a commissioner. In affirming, the Appellate Division held: (1) “misconduct in office” as proscribed by the statute must touch upon or relate to plaintiff’s public office; (2) no evidence linked Maloney’s conduct to his office, given his claim that he intended to send the pornographic video to one person but inadvertently sent it to the entire Facebook group, which itself was not part of his office or employment or related to his position as commissioner; and (3) because it was private misconduct and did not directly or indirectly involve his public office, it cannot form the basis for his removal from office under N.J.S.A. 40:14A-5(c).

Appellate Division affirms that certain information from police investigatory reports, including the type of crime being investigated and related details, may be disclosed under OPRA

Ciolek v. Twp. of Roxbury, 2025 N.J. Super. Unpub. LEXIS 341 (App. Div. Dkt. No. A-1068-23)

Following a remand to the trial court to perform an in camera inspection of disputed records, the Appellate Division of the Superior Court, in an unpublished opinion, affirms the trial court's order finding that attorney Ciolek's request seeking from the Township of Roxbury certain police investigatory reports and notes (specifically, information as to the type of crime being investigated, as well as the time, location and type of weapon, if any) is to be treated as a request for information under the Open Public Records Act (OPRA). The trial court also granted Ciolek's request for attorney's fees, and denied the Township's cross-motion for reconsideration. The Township appealed, supported by amici briefs filed by the New Jersey League of Municipalities, among others. In affirming, the Appellate Division held: (1) Because Ciolek's verified complaint and subsequent clarification on the record made clear the information being sought, the Township was on actual notice of the request, and the trial court did not err in ordering the disclosure; (2) these unique circumstances do not give rise to an improper expansion of the role of records custodians by requiring a review of exempt documents for non-exempt information as expressed by the Township and amici; and (3) there was no error or abuse of discretion in the trial court's decision to award attorney's fees and costs to Ciolek.

Appellate Division affirms reinstatement and OPRA attorney-fee award to high school basketball coach who was not provided with adequate "Rice" notice, and dismissal of his other claims

Allen v. Atl. City Bd. of Educ., 2025 N.J. Super. Unpub. LEXIS 384 (App. Div. Dkt. No. A-3282-22)

The Appellate Division of the Superior Court, in an unpublished opinion, affirms Law Division orders partially granting summary judgment and awarding attorney fees under the Open Public Records Act (OPRA) to Allen, a teacher employed by the Atlantic City Board of Education who sued the Board when it did not reappoint him to an extracurricular position as a high school basketball coach. The trial court ordered Allen's reinstatement to that position, finding the Board violated the Open Public Meetings Act (OPMA) and the CNA's notice provisions when it inadequately and improperly served Allen a "Rice" notice about the relevant Board meeting. The trial court awarded Allen attorney fees as a prevailing party on his related OPRA count and no monetary damages on Allen's OPMA and Employer-Employee Relations Act

(EERA) counts because the reinstatement order remedied those violations. The trial court dismissed Allen's related claims of violations of the New Jersey Civil Rights Act (NJCRA), among others. In affirming, the Appellate Division held: (1) NJCRA remedies do not apply to deprivations of OPMA rights; and (2) the trial court's fee award was tethered to work directly related to the OPRA violation, and it did not abuse its discretion in awarding attorney's fees only for that amount.