



**STATE OF NEW JERSEY
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DATE: May 21, 2025

TO: Commissioners

FROM: Counsel Staff

RE: Developments in Counsel's Office since April 24, 2025

Commission Cases

Appeals from Commission Decisions

The Cedar Grove Board of Education withdrew its 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 unilaterally required employees to use sick leave and FMLA leave concurrently, without negotiating with the Association.

Rutgers, the State University of New Jersey, filed an appeal from the Commission's decision, P.E.R.C. No. 2025-29, 51 NJPER 287 (¶65 2025), which denied Rutgers' request for a restraint of binding arbitration of Teamsters Local 97's grievance contesting the termination of a unit employee after she allegedly failed to comply with Rutgers' seasonal flu vaccination requirement.

The State of New Jersey filed an appeal from the Commission's

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decision, P.E.R.C. No. 2025-25, 51 NJPER 235 (¶56 2025), which reviewed and modified the Director of Representation's decision addressing consolidated clarification of unit petitions concerning over 1,000 employees of state colleges and universities and whether they should be included in one of the CWA or AFT's statewide units. Counsel's office then wrote to the Clerk's office advising that the Commission decision is final only as to four of the six docket numbers listed on the agency decision. The Appellate Division requested a response from the State, which is pending.

After Counsel's office filed opposition, the Appellate Division denied the County of Gloucester's motion for leave to appeal an interim relief decision, I.R. No. 2025-6, in the matter of County of Gloucester and Communication Workers of America (Local 1085), Docket No. CO-2025-130.

Commission Court Decisions

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

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

Appellate Division affirms dismissal of police unions' retroactive pay claims in connection with unilateral actions of the State Monitor under Municipal Stabilization and Recovery Act

Atl. City Policemen's Benevolent Ass'n Loc. 24 v. City of Atlantic City, 2025 N.J. Super. Unpub. LEXIS 538 (App. Div. Dkt. No. A-2478-23)

The Appellate Division of the Superior Court, in an unpublished opinion, affirms a Law Division order summarily dismissing the police unions' complaint against the City of Atlantic City in a dispute arising under the Municipal Stabilization and Recovery Act (MSRA). In 2016 the Commissioner of the Department of Community Affairs designated the City as a municipality in need of stabilization and recovery and appointed a Designee with authority under the MSRA to unilaterally modify, amend, or terminate any collective negotiations agreements or terms and conditions of employment if such actions are reasonable and

directly related to stabilizing the City's finances. Through a series of Implementation Memos, the Designee then proceeded to unilaterally modify certain memoranda of agreement (MOAs) that the parties had entered into the day before the 2016 enactment of the MSRA. Following the settlement of related litigation, the unions sued the City for retroactive pay raises purportedly due under the MOAs. In affirming the trial court, the Appellate Division held, among other things: (1) the Designee was authorized to amend or terminate the MOAs under the MSRA, and could modify terms and conditions of employment, including salary; (2) because the MOAs' two contingencies (a salary increase either ratified by the parties or awarded by an interest arbitrator) were never met, there were no "accrued unpaid wages"; (3) the Implementation Memos allowed for no supplemental compensation, and were reasonable because they were designed to address the City's dire financial situation; and (4) the City did not act in bad faith by complying with MSRA mandates.

Appellate Division upholds termination of corrections officer over insubordination to superior officer

In re Bellamy, 2025 N.J. Super. Unpub. LEXIS 556 (App. Div. Dkt. No. A-0747-23)

The Appellate Division of the Superior Court, in an unpublished opinion, affirms the Civil Service Commission's (CSC's) final agency decision removing Bellamy from her position as a County Correction Police Officer for the Mercer County Corrections Center. Bellamy faced charges of insubordination and disrespect to a superior officer arising from an incident when Bellamy improperly radioed her supervisor a request for assistance with an inmate and later got into an argument with the supervisor about it. An administrative law judge's (ALJ's) initial decisions upholding the termination were based on credibility assessments of testimony by Bellamy and the superior officer. The ALJ also rejected as untimely Bellamy's argument that her termination violated the Attorney General Guidelines because it was raised for the first time in Bellamy's post-hearing brief. In affirming, the Appellate Division held: (1) the ALJ properly exercised his discretion in declining to consider issues raised

for the first time during written summations; and (2) removal was the appropriate penalty in light of Bellamy's lengthy disciplinary record including multiple instances of insubordination.

Appellate Division revives wrongful termination claim of former aide to city councilman, to determine if he was employed at will or subject to CNA, and if his 1st Amendment rights were violated

Allen v. City of Newark, 2025 N.J. Super. Unpub. LEXIS 580 (App. Div. Dkt. No. A-2366-23)

The Appellate Division of the Superior Court, in an unpublished opinion, affirms in part, reverses in part, and remands a trial court's decision summarily dismissing Allen's complaint alleging his termination by the City of Newark from his job as an aide for a Councilman in the West Ward of the City was wrongful, amounted to a breach of contract, and violated his right to free speech. Allen also alleged the Councilman cast him in a false light by calling him a "thug" after his termination, allegedly referring to Allen's past criminal history. Prior to his termination, Allen had sought petitions from West Ward constituents in a bid to challenge the Councilman in an upcoming election. Allen argued his termination was barred by a Newark Executive Order that entitled any individual "certified" candidates for municipal elective office "to maintain their position with the City." Allen also contended he was a union-represented employee protected by a collective negotiation agreement and was terminable only "for cause" based on the CNA and his employee handbook. The Appellate Division held: (1) the Executive Order did not apply to Allen as he was not a "certified" candidate prior to being terminated; (2) because a genuine issue of material fact exists as to whether Allen was an employee terminable at will, or subject to the CNA and terminable only for cause, the trial court should not have dismissed the wrongful termination and breach of contract claims; (3) because the trial court did not address it, Allen's First Amendment count must be reinstated for an evaluation of whether his free speech rights were violated by his termination; and (4) Allen's false light claim was properly dismissed as it was time-barred by the relevant statute of limitations.

Third Circuit upholds grievance arbitration award that found employee's termination was without just cause but refused to award reinstatement based on after-acquired evidence

Teamsters Loc. Union No. 355 v. Ensinger Penn Fibre, Inc., 2025 U.S. App. LEXIS 8803 (3d Cir. Dkt. No. 24-1037)

The Third Circuit Court of Appeals, in a non-precedential decision, affirms the District Court's order granting summary judgment to Ensinger and denying the Union's summary judgment motion on the Union's complaint to vacate the remedial portion of a grievance arbitration award. The grievance challenged Ensinger's termination of Hall, a union member, for leaving his workstation as an equipment operator without permission for the third time in less than a month. The arbitrator concluded Ensinger terminated Hall without just cause, but refused to award reinstatement and backpay on the grounds that Ensinger had discovered –after Hall's termination– that Hall had been under the influence of alcohol at work on the date of his termination. Because Ensinger's employee handbook explicitly stated that an employee would be subject to immediate dismissal for reporting to work while under the influence of alcohol, the arbitrator found reinstatement would be futile. In affirming, the Third Circuit agreed with the arbitrator that Hall's later-discovered conduct would have furnished grounds for Ensinger to terminate his employment, and thus concluded the arbitrator did not exceed his authority under the CBA by refusing to award reinstatement and backpay.

Appellate Division upholds Civil Service Commission's termination of police officer for egregious misconduct

In re Clark, 2025 N.J. Super. Unpub. LEXIS 611 (App. Div. Dkt. No. A-3139-22)

The Appellate Division of the Superior Court, in an unpublished opinion, affirms a final administrative determination of the Civil Service Commission (CSC) adopting an Administrative Law Judge's (ALJ's) initial decision upholding the majority of the charges against Clark and his removal from his position as a

police officer with the Monroe Township Police Department (MPD). Clark was charged, suspended, and removed after the MPD conducted five internal affairs investigations arising out of multiple allegations of Clark's misconduct from 2015 to 2017. In affirming, the Appellate Division found the CSC's decision was supported by credible evidence in the record, which demonstrated Clark engaged in conduct unbecoming of a public employee when he involved himself in his fiancée's traffic stop, requested a courtesy from the responding officer, solicited Percocet, sold his handgun without the proper paperwork, lied as to the source of the Percocet in his system during his initial internal affairs interview after failing the drug test, drove into oncoming traffic, was involved in a domestic altercation, flashed his retired father's police badge and stated he was an "off-duty" officer while on suspension, improperly transported his handgun in violation of MPD policy, and was involved in the theft of his landlord's property. This "litany of sustained egregious conduct," the court held, "more than proved Clark's complete disregard for his position and required his immediate termination in the interest of public safety."

Appellate Division affirms dismissal of police officer's retaliatory denial of promotion lawsuit because he should have grieved the claim under the CNA

Rossy v. Mayor, 2025 N.J. Super. Unpub. LEXIS 648 (App. Div. Dkt. No. A-1436-23)

The Appellate Division of the Superior Court, in an unpublished opinion, affirms a Law Division order summarily dismissing Rossy's single count complaint alleging retaliatory denial of a promotion to the position of sergeant with the Mount Olive Police Department. The trial court found Rossy did not have the right to file an independent lawsuit where the relevant rules required him to go through the grievance procedure under the CNA. In affirming, the Appellate Division held, among other things: (1) when a CNA designates a grievance procedure as a means of resolving disputes and the dispute at issue is covered by that procedure, it must be resolved through the specified procedure and not the courts; (2) the CNA specified a procedure

for the promotions process, thus Rossy's claim fell squarely within the ambit of the grievance procedure; and (3) Rossy suffered no deprivation of due process where he was neither discharged nor suffered a reduction in pay, and his rank and status were unaffected by defendant's actions.

Appellate Division reverses Civil Service Commission, remands for OAL hearing to decide material disputed facts in transgender employee's discrimination complaint against union president

In re S.L., 2025 N.J. Super. Unpub. LEXIS 700 (App. Div. Dkt. No. A-1459-23)

The Appellate Division of the Superior Court, in an unpublished opinion, reverses the Civil Service Commission's (CSC's) final agency decisions that upheld the Department of Children and Families' (DCF's) finding that S.L., a DCF employee, violated the New Jersey State Policy Prohibiting Discrimination in the Workplace (the Policy). Based on a complaint by a transgender female employed by the Department of Labor and Workforce Development (DOL), the DCF office concluded that S.L. violated the Policy by deliberately misnaming the complainant (using her legal name and not her preferred name) in September of 2022. At that time S.L. was president of his local union, and the complainant was supporting a friend running for union president against S.L. The CSC denied S.L.'s appeal and request for a hearing, and denied reconsideration. In reversing, the Appellate Division remanded to the Office of Administrative Law. The court found the plain language of the relevant CSC regulation required a hearing before an Administrative Law Judge to decide material disputed facts relating to: (1) the interaction between the parties on the morning when complainant told S.L. she was transitioning; (2) when S.L. learned complainant was using a preferred name; and (3) whether S.L. intentionally refused to use complainant's preferred name on more than one occasion thereafter. The court found these were all relatively complex and nuanced factual questions, the resolution of which must be assessed by a factfinder making first-hand observations and witness credibility evaluations.

Appellate Division affirms municipal police officer's disciplinary removal for cocaine-positive workplace drug test and mishandling drug evidence

Cincotta v. Borough of Longport, 2025 N.J. Super. Unpub. LEXIS 769 (App. Div. Dkt. No. A-1390-23)

The Appellate Division of the Superior Court, in an unpublished opinion, affirms a Law Division order sustaining the termination of Cinotta's employment as a sergeant with the non-civil service Borough of Longport Police Department. Cinotta faced departmental disciplinary charges arising from his purported mishandling of drugs during a traffic stop and arrest, when for a period of time he "manipulated" suspected stones of crack cocaine with "ungloved hands." Later, Cinotta did not disclose that drug exposure before undergoing a random workplace drug test, which showed a positive result for cocaine. Evidence and testimony at the resulting departmental hearing showed Cinotta tested positive at a significantly higher level than if his exposure had been only from the traffic stop incident. The Borough adopted its hearing officer's report which sustained all charges and rejected Cinotta's "defense of accidental ingestion through transdermal absorption via gloveless exposure and nail-biting habits." On de novo review, the Law Division affirmed. In affirming, the Appellate Division held: (1) Cincotta's termination was well-supported by the credible evidence in the record; and (2) termination was a proportionate punishment, notwithstanding Cinotta's favorable disciplinary record, because his violation of the pertinent policy and regulations "went to the heart" of his ability to dutifully carry out his responsibilities and was conduct "unbecoming" a police officer.