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DATE: August 20, 2025

TO: Commissioners

FROM: Counsel Staff

RE: Developments in Counsel's Office since June 26, 2025

Commission Cases

Appeals from Commission Decisions

The New Jersey Supreme Court granted separate motions for leave to file amicus curiae (friend of the Court) briefs that were submitted by the New Jersey Education Association (NJEA), and the State Attorney General (AG) in IMO Rutgers, the State University of New Jersey, et. al. (Supreme Court Docket No. A-46-24).¹ The

¹ In this matter Rutgers seeks review of the judgment of the Superior Court, Appellate Division, In re Rutgers, 2024 N.J. Super. Unpub. LEXIS 3033, affirming the Commission's decision, P.E.R.C. No. 2024-2, 50 NJPER 127 (¶31 2023). The Commission denied Rutgers' petition to restrain 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. The Appellate Division affirmed, rejecting Rutgers' claim that the "grievance

NJEA and AG support the decisions below in their subsequently filed amicus briefs. Motions for leave to file as within time and to appear as amicus were also filed jointly by a number of other unions including the American Federation of Teachers (AFT) and Communication Workers of America (CWA). When that filing was marked deficient AFT, et al, filed amended papers, but to date the Court has not yet ruled on it. To date Rutgers has filed briefs in reply to the NJEA's amicus brief and in opposition to the AFT's motion for leave to appear as amicus, and has requested an extension of time to reply to the AG's amicus brief.

The Appellate Division granted the State of New Jersey's motions for leave to appeal and for an extension of time to file the supporting brief and certification, from the Commission's 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 whether 1,000+ employees of state colleges and universities should be included in one of the CWA or AFT's statewide units. The court previously dismissed without prejudice the State's initial notice of appeal on the basis that the decision appealed from is interlocutory and leave to appeal was not sought.

Oral argument is scheduled for October 1, 2025, in the Township of Mount Olive's 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.

Commission Court Decisions

No new Commission court decisions were issued since June 26.

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

process" required by Title IX (which prohibits sex-based discrimination in any school or education program that receives federal funding) preempts collectively negotiated grievance procedures that may be available to represented employees after discipline has been imposed based upon determinations of misconduct under the Title IX Policy.

Appellate Division affirms State Trooper's removal for violating terms of last chance agreement

In re Travis, 2025 N.J. Super. Unpub. LEXIS 1152 (App. Div. Dkt. No. A-2552-23)

The Appellate Division of the Superior Court, in an unpublished opinion, affirms a final agency decision of the Superintendent of the New Jersey State Police (NJSP) terminating Michael Travis' employment as a State Trooper for violating the terms of a "last chance agreement" (LCA) and ordering his removal from the NJSP. In 2013, Travis was involved in an alcohol-influenced motor vehicle accident. In lieu of being terminated for that incident, Travis entered into the LCA which stipulated that any new substantiated allegation of misconduct deemed significant enough by the Superintendent would result in summary dismissal. NJSP terminated Travis under the LCA after he was charged in 2023 with leaving the scene of an accident involving personal injury and other offenses. He later pled guilty to using a cell phone while driving and failing to report an accident. When Travis's union grieved the decision, the Superintendent provided additional details about substantiated allegations including assault by auto, careless driving, failure to notify the Division, and intentionally providing false information during a misconduct investigation. In affirming, the Appellate Division held: (1) NJSP properly enforced the LCA when terminating a trooper's employment after new allegations of misconduct were substantiated; (2) The statutory 45-day time limit for filing complaints against State Police troopers for violations of internal rules does not apply when termination is based on the enforcement of a previously executed LCA rather than on new independent grounds for removal; and (3) the decision to terminate was not arbitrary, capricious, or unreasonable despite lacking detailed factual findings in the final decision letter, as sufficient justification was provided in the record.

Appellate Division partially affirms, partially vacates back pay award to school guidance counselor for his "illegal" dismissal, and remands for further proceedings

Ryan v. Hammonton Town Bd. of Educ., 2025 N.J. Super. Unpub. LEXIS 1263 (App. Div. Dkt. No. A-0662-23)

The Appellate Division of the Superior Court, in an unpublished opinion, affirms in part, vacates in part, and remands for further proceedings a trial court judgment against the Hammonton Town Board of Education and in favor of Michael Ryan, a tenured

guidance counselor employed by the Board, awarding Ryan \$364,472.20 in back pay under N.J.S.A. 18A:6-30. The law entitles public school employees who are illegally dismissed or suspended to be compensated for the period covered by the illegal dismissal or suspension. In 2015 Ryan was charged in municipal court with an act of lewdness. Because lewdness is a disqualifying offense for public school employment, the same month Ryan was charged, the Board suspended him with pay pending adjudication of the charges. The municipal court ultimately convicted Ryan on the lewdness charge, and he filed a timely de novo appeal of his conviction with the Law Division. As a consequence of the conviction, the Board converted his suspension to be without pay. Shortly thereafter, the Criminal History Review Unit (CHRU) of the Department of Education informed Ryan he was "permanently disqualified" from employment with any public school in the state. The Board then terminated Ryan's employment. On de novo review, the Law Division found Ryan guilty and entered a judgment of conviction against him. Before judgment was entered Ryan applied for retirement, effective June 1, 2017, out of "financial necessity." Ryan later appealed his conviction, and on December 5, 2017, the Appellate Division remanded for a new trial. After the prosecutor's office "declined to continue the prosecution," the lewdness charge was dismissed. Ryan then requalified for public school employment and the Board rehired him to the same position he had previously occupied, but the parties were unable to reach an agreement concerning his entitlement to back pay. The issue was litigated, resulting in the trial court's back pay award. Upon review, the Appellate Division held: (1) Ryan's dismissal, which was initially legal following a conviction for a disqualifying offense, transformed into an "illegal" termination for purposes of a back pay award under N.J.S.A. 18A:6-30 once the disqualifying conviction was vacated and the charges were dismissed; (2) Ryan's retirement benefits cannot be used to mitigate damages in the back pay award where he was required to reimburse the Division of Pensions for all retirement money received during the period of illegal dismissal; and (3) Ryan's retirement did not terminate his entitlement to back pay where he rescinded his retirement and was rehired to his previous position. The Appellate Division affirmed the trial court's orders barring the Board from arguing mitigation of damages with respect to retirement benefits and held that Ryan's early retirement did not terminate his entitlement to back pay. The case was remanded for the trial court to reassess Ryan's summary

judgment application and consider the two remaining requirements for a back pay award under N.J.S.A. 18A:6-30: whether the dismissal was finally determined to be without good cause, and whether Ryan made a written application within thirty days of that determination.

Appellate Division upholds termination of corrections officer for positive workplace drug test result

In re McCauley, 2025 N.J. Super. Unpub. LEXIS 1268 (App. Div. Dkt. No. A-1343-23)

The Appellate Division of the Superior Court, in an unpublished opinion, affirms the Civil Service Commission's (CSC's) final decision upholding the New Jersey Department of Corrections' (DOC) termination of Robert McCauley's employment as a senior corrections officer at the Southern State Correctional Facility due to a positive drug test. In a random workplace drug test, MacCauley tested positive for amphetamine and methamphetamine at levels 388 times higher than the laboratory's cutoff. He claimed the result was due to over-the-counter allergy medication but admitted he did not accurately complete his medication form, and he never requested testing of his second sample. In affirming, the Appellate Division held: (1) substantial evidence supported that McCauley tested positive for illegal drugs, including expert testimony that OTC medications could not cause the positive result; (2) McCauley's due process rights were not violated because he never attempted to exercise his right to have the second sample tested; and (3) progressive discipline was inapplicable because the Attorney General's Law Enforcement Drug Testing Policy requires termination upon a finding of illegal drug use by law enforcement officers.

Third Circuit, reversing lower court, remands grievance arbitration award that reinstated worker who was terminated for workplace sexual harassment, directs arbitrator to determine whether sexual harassment occurred before reinstating employee

Welch Foods Inc. v. Gen. Teamsters, 2025 U.S. App. LEXIS 17145 (3d. Cir. Dkt. No. 24-2889)

The Third Circuit Court of Appeals, in a non-precedential decision, reverses and remands for further proceedings the District Court's order that left intact a grievance arbitration

award in favor of General Teamsters Local 397. The award reinstated Woodward, a union member and employee of Welch Foods, Inc., after the company terminated him for committing sexual harassment against another worker. In the underlying incident, Woodward had a verbal altercation with the other employee in which both used foul language. Woodward used gender-based slurs and allegedly created a hostile work environment through "threatening and intimidating behavior and language." The company initially terminated both employees but later reduced the other's punishment to a ten-day suspension while maintaining Woodward's termination for "[d]isrespectful language that was abusive, sexually explicit and derogatory towards another co-worker and women in general." The arbitrator reduced Woodward's punishment from termination to a ten-day suspension without making a finding as to whether sexual harassment occurred. Applying case law precedent under the controlling law, Title VII of the Civil Rights Act of 1964 and related regulations (establishing a public policy against sexual harassment in the workplace), the Third Circuit held: (1) the charges described in Woodward's termination letter (creating a hostile work environment and using sexually explicit and derogatory language), if proven, amount to sexual harassment as a matter of law; (2) when an employee is accused of sexual harassment, an arbitrator must make a determination as to whether the harassment occurred before reinstating the employee; (3) the arbitrator's reduction of Woodward's punishment was based solely on her view that the other employee and Woodward should receive the same level of discipline, given that the other employee instigated the incident and both used inappropriate language; and (4) the arbitrator's decision to reinstate Woodward without determining whether he committed sexual harassment violates public policy against sexual harassment in the workplace. Accordingly, the Third Circuit remanded for the Arbitrator to determine whether Woodward created a hostile work environment in violation of Title VII. The court further directed that if the arbitrator finds Woodward did engage in sexual harassment, and nevertheless finds it appropriate to reinstate him, she should explain why lesser discipline is appropriate in light of the public policy against sexual harassment in the workplace.

Appellate Division upholds 5-day unpaid suspension of investigator employed by county prosecutor's office for searching police database for unofficial reasons

Renner v. Gloucester Cnty. Prosecutor's Off., 2025 N.J. Super. Unpub. LEXIS 1315 (App. Div. Dkt. No. A-1528-23)

The Appellate Division of the Superior Court, in an unpublished opinion, affirms a Law Division order upholding a five-day unpaid suspension imposed on Breia Renner, a Sworn State Investigator and Acting Detective at the Gloucester County Prosecutor's Office (GCPO), a non-civil service employer. The suspension was for Renner's unauthorized search of a police records database and for Renner's subsequent lack of candor about the database infraction. Renner and her supervisor were authorized to search the database, but only for official duties, not personal reasons. Renner caused her supervisor to view reports about an incident where her cousin was punched at a bar, allegedly by an off-duty police officer. During the investigation, the supervisor and two other detectives denied Renner's claim that she had discussed the incident with them prior to initiating the search. A departmental hearing officer sustained all charges and recommended the five-day suspension. A trial court sustained the penalty upon de novo review. In affirming, the Appellate Division held: (1) there was "no question" Renner accessed the database for personal reasons unrelated to her official duties, a violation not excused by the fact that her supervisor initially agreed to conduct the search or that other employees allegedly accessed the database for personal reasons; (2) there was sufficient evidence that Renner fabricated a discussion with other detectives in an attempt to minimize her infraction; and (3) the five-day suspension was appropriate given the serious nature of compromising sensitive information in the database.

Appellate Division affirms disciplinary removal of township police officer for untruthfulness about off-duty DWI incident

Greco v. Twp. of E. Windsor, 2025 N.J. Super. Unpub. LEXIS 1395 (App. Div. Dkt. No. A-3233-22)

The Appellate Division of the Superior Court, in an unpublished opinion, affirms a trial court's order upholding the removal of Michale Greco from his employment as an officer of the East Windsor Township Police Department, a non-civil service employer. The Township sought Greco's removal for violating departmental rules and regulations in connection with his untruthfulness about his involvement in a single-vehicle accident while off-duty. The State Police issued Greco summonses, including for driving while

intoxicated, despite that Greco told the trooper he was not driving the vehicle. Greco told his department he broke his arm in the accident but did not disclose the summonses until four days after the accident. When requesting sick leave, Greco reported he was a passenger in the vehicle but later told his direct supervisor that he was the sole occupant. Greco was terminated following a departmental hearing at which the hearing officer sustained all charges, finding Greco's statements were untruthful and intentionally misleading in an attempt to avoid discipline. Greco sought review in Superior Court. Following a bench trial, the trial court sustained the removal based upon Greco's inconsistent and non-credible testimony but dismissed a charge relating to his failure to timely notify his department of the summonses. In affirming, the Appellate Court held, among other things: (1) the trial court's decision was not arbitrary, capricious, or unreasonable and was supported by credible evidence in the record; (2) the trial court properly found that Alcohol Induced Amnesia (AIA) could serve as a defense for Greco's failure to timely report the summonses but did not excuse his untruthfulness regarding the accident; and (3) progressive discipline was not required despite Greco's largely unblemished prior record because his pattern of untruthful statements was severe enough to warrant dismissal.

Appellate Division upholds disciplinary removal of correction officer for using offensive language, sex-related slurs, and threats of physical violence toward fellow officers

In re Tracy, 2025 N.J. Super. Unpub. LEXIS 1419 (App. Div. Dkt. No. A-1629-23)

The Appellate Division of the Superior Court, in an unpublished opinion, affirms the Civil Service Commission's (CSC's) final administrative action upholding the New Jersey Department of Corrections' (DOC) disciplinary removal of Chad Tracy from his employment as a senior correction officer with over 18 years of experience at a youth correctional facility. The disciplinary action stemmed from Tracy's verbal altercation with another officer named Strittmatter. The incident occurred in the presence of inmates and was witnessed by other officers. Tracy called Strittmatter offensive names including homophobic and sexist slurs, threatened physical violence, insulted Strittmatter's wife, mocked his living situation, and made sexually explicit comments about Strittmatter's relationship with

an administrator. Tracy had also been disciplined previously for using similar offensive language toward another officer. In affirming, the Appellate Division held, among other things: (1) the CSC's decision to uphold Tracy's removal was not arbitrary, capricious, or unreasonable; (2) the severity of Tracy's misconduct justified bypassing progressive discipline and imposing removal despite Tracy's prior service record; and (3) law enforcement officers are held to a higher standard of conduct, and egregious behavior that undermines public trust warrants removal without regard to progressive discipline.