



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

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**DATE:** March 26, 2026  
**TO:** Commissioners  
**FROM:** Counsel Staff  
**SUBJECT:** Developments in Counsel's Office since February 26,  
2026

**Commission Cases**

Appeals from Commission Decisions

The Garfield Board of Education filed an appeal from P.E.R.C. No. 2026-22, 52 NJPER 220 (¶59 2026), in which the Commission denied the Board's request for a restraint of binding arbitration of the Garfield Federation of Teachers' (GFT) grievance alleging the Board violated the parties' collective negotiations agreement by requiring GFT members to pay more than the negotiated co-payments for prescription medication. The Commission found statutes governing the School Employee Health Benefits Plan did not preempt the grievance because the Board purchases prescription drug benefits separately from that plan "without limitation or restriction."

Tp. of Clinton and Stephen Hars, App. Div. Dkt. No. A-003962-23

Oral argument is scheduled on March 26, 2026, in the matter of the Township of Clinton and Stephen Hars, App. Div. Dkt. No. A-

003962-23, in which Mr. Hars appeals from a decision by the Director of Arbitration, DA-2024-007, declining to process Hars' request to appoint a special disciplinary arbitrator (SDA) to review the disciplinary termination of his employment as a police officer for the Township's Police Department; and from the Director's denial of Hars' request for reconsideration. The Director found Hars was ineligible for SDA because the charges against him related to conduct that would constitute a violation of the criminal laws of New Jersey.

#### Commission Court Decisions

No new Commission court decisions have been issued since February 26.

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

Appellate Division affirms CSC decision denying city's request to convert Police Chief title from classified to unclassified civil service

IMO Police Chief, Paterson., 2026 N.J. Super. Unpub. LEXIS 440 (App. Div. Docket No. A-1144-23)

The Appellate Division of the Superior Court, in an unpublished opinion, affirms the Civil Service Commission's (CSC's) denial of the City of Paterson's application to convert its Police Chief title from the classified to the unclassified service. The CSC determined that pursuant to statute, only first-class cities operating under the Mayor-Council Plan C form of government may utilize unclassified appointments for the Police Chief title, whereas Paterson uses the Mayor-Council Plan D format. It further found that it does not have independent authority under its rules to convert the classification, and even if it did, the City did not meet the applicable standard. The Appellate Division agreed for substantially the same reasons and dismissed the appeal

Appellate Division affirms CSC dismissal of challenge to pre-employment psychological exam result as untimely

IMO F.T. Police Officer, 2026 N.J. Super. Unpub. LEXIS 390 (App. Div. Docket No. A-1557-24)

The Appellate Division, in an unpublished opinion, affirms the CSC's removal of a candidate for police officer, F.T., from the eligibility list for psychological disqualification. The City of

Clifton certified F.T. from the eligibility list to work as a police officer. After a pre-employment psychological screening, the psychological evaluator did not recommend F.T. for appointment, he was removed from the list. F.T. appealed. Nine days before the appeal deadline, F.T.'s attorney requested the City's psychological report and received it the next day; but the attorney did not submit F.T.'s expert report in support of the appeal until over 40 days after the appeal deadline. F.T. sought an extension to submit the report, arguing that the late receipt of Clifton's report, difficulty scheduling an evaluation, and his own attorney's vacation were good cause to submit the report late. The CSC determined this was not sufficient just cause for an extension, and that strict enforcement of the statutory deadline was important in the event a candidate was improperly rejected and would need to be appointed retroactively. The Appellate Division found the CSC's action was not arbitrary or capricious, finding that the CSC's need for contemporaneous psychological reports and their one-year expiration date justified its decision.

Appellate Division affirms CSC decision denying waiver of salary overpayment because a repayment plan was yet to be implemented pursuant to a grievance arbitration award

IMO Antenucci and State Police, 2026 N.J. Super. Unpub. LEXIS 386 (App. Div. Docket No. A-4037-23)

The Appellate Division affirms a final decision of the CSC denying State Trooper Vincent Antenucci's request for a waiver of a repayment of salary overpayment. Due to an administrative error, Antenucci was placed on the incorrect salary step in 2012. In May 2019, the State Police discovered the error, finding he was overpaid about \$29,000 over the years and advised him that he would have to return the money. He then applied for a repayment waiver, which was denied. He appealed that waiver request, which was dismissed by the Appellate Division in 2021. Separately, his union filed a grievance on his behalf. The grievance arbitrator assigned to the matter determined that the Association failed to prove that Antenucci was not mistakenly overpaid but found the NJSP failed to negotiate over the repayment plan for the overpaid salary and directed the parties to negotiate a reasonable, and if necessary, lenient repayment schedule. Instead of negotiating a repayment plan, he filed another application for a waiver of repayment. The CSC again denied it, finding that it lacked the ability to set aside the arbitration award and that Antenucci could not prove economic hardship where a repayment schedule had not been set. The Appellate Division affirmed for substantially the same reasons, finding there was no attempt to vacate the arbitration award, and that without a set repayment schedule, it is unknown whether it would cause an economic hardship to

Antenucci.

Appellate Division reverses pension board's decision reducing teacher's pension for misconduct because it did not timely reject an ALJ's recommended decision or seek an extension

Zlotkin v. Board of Trustees, 2026 N.J. Super. Unpub. LEXIS 378 (App. Div. Docket No. A-1560-24)

The Appellate Division reverses the final agency action of the Teachers' Pension and Annuity Fund Board of Trustees which modified and rejected an administrative law judge's (ALJ's) determination to reduce the forfeiture of Howard Zlotkin's pension. Zlotkin resigned his teaching position after he spoke to his students in an inappropriate manner regarding political and racial matters after a student proposed a hypothesis that all White people are privileged. Towards the end of the interaction, he loudly retorted "F-k you" in response to a student saying he was privileged and held up his middle finger. The interaction was recorded and school administrators removed him from teaching duties. He then resigned. The matter was referred to the Board of Examiners, which accepted an ALJ's finding that issued a two-year suspension of his teaching certificate. Zlotkin also applied for his pension. The Board of Trustees found that his misconduct was severe enough to warrant a 10% permanent reduction in his annual annuity. Zlotkin appealed and the matter was referred to the Office of Administrative Law (OAL) as a contested case. An ALJ, after a hearing, reduced the penalty to a forfeiture of service from the date of the incident to the date of his retirement. The Board rejected the ALJ decision and reimposed the 10% penalty. The Appellate Division reversed and reinstated the ALJ's decision because the Board issued its decision more than 45 days after the ALJ decision. It held that the timelines for administrative agencies to adopt, reject, or modify an ALJ's decision are strictly applied, and thus, the ALJ's decision became "deemed approved" by the Board where the Board never sought an extension to issue its new decision.

Appellate Division affirms CSC decision upholding termination of police officer who did not respond to calls for service while watching NFL draft at union clubhouse, then lied about it

IMO Mercado and Pennsauken Tp., 2026 N.J. Super. Unpub. LEXIS 346 (App. Div. Docket No. A-1462-24)

The Appellate Division affirms the final agency decision of the CSC, which adopted the findings of fact, conclusions of law, and

recommendations from an ALJ's initial decision sustaining multiple disciplinary charges against Jimmy Mercado, a police officer employed by Pennsauken Township. In April 2022, two police officers, including Mercado, were dispatched to two service calls. They did not report to those calls. GPS location of the police vehicle showed that Mercado, along with other officers, were watching the NFL draft at the police union clubhouse across town. An internal affairs investigation determined that Mercado's patrol logs were missing and that his trip sheets differed as to his location at the time of the initial service call by indicating he was across town when instead his vehicle was at the clubhouse. Mercado also provided different explanations at different times as to why he was at the clubhouse and why he did not respond to the calls. He was also asked to recreate his patrol log, which, once complete, never included his time at the clubhouse. The Township eventually terminated his employment for a host of reasons, including conduct unbecoming, neglect of duty, loafing, and untruthfulness. After a hearing before an ALJ, all but one charge were sustained and the termination upheld. The CSC adopted the decision in its entirety. The Appellate Division affirmed the CSC, finding that the record supported its determination and that it did not arbitrarily or capriciously find credible the investigating officer's testimony where the report contained minor mistakes not relied on by the ALJ in sustaining the discipline.

Appellate Division holds recordings by police body-worn cameras may be subject to disclosure even if police don't tell subjects they are being recorded as required by Body Worn Camera Law

Borough of Spotswood v. Middlesex Cnty. Prosecutor's Off., 2026 N.J. Super. Unpub. LEXIS 395, (App. Div. Dkt. No. A-3457-23)

The Appellate Division, in an unpublished opinion, partially reverses and modifies a trial court's decision finding that certain recordings from Borough of Spotswood police officers' body-worn cameras (BWCs) were not subject to release under the Body Worn Camera Law (BWCL) and the Open Public Records Act (OPRA) and common law, but otherwise granting the release of redacted police internal affairs (IA) reports which included information about the recordings. The underlying dispute arose when officers filmed the then-Mayor of Spotswood on their BWCs at the Borough's offices while she expressed concerns about a visitor. The officers did not tell the Mayor that they were doing so, as required by the BWCL. The Borough then filed an action seeking to enjoin the Middlesex County Prosecutor's Office

from releasing the recordings, arguing that they were improperly obtained and should be destroyed. The intervenors, a newspaper chain and a citizen requestor, opposed that action. Ruling for the Borough, the trial court considered the "seeming dissonance" between the "destruction provision" of the BWCL (stating that BWC recordings "recorded in contravention of" the BWCL or any other applicable law "shall be immediately destroyed and shall not be admissible as evidence") and the disclosure and evidential use contemplated by the BWCL's notification provisions (directing that "the admissibility of any statement or evidence" shall not be affected by a BWC-wearing officer's failure to notify subjects that they are being recorded). Reversing the trial court's contrary legal conclusions and noting they were also inconsistent with relevant Attorney General Guidelines, the Appellate Division held: (1) the trial court erred in reading the BWCL to require destruction of the recordings for a failure to notify, because doing so would render superfluous the evidentiary terms of the notice provision; (2) the trial court thus erred in determining that the BWC recordings, because they allegedly were improperly made, were not "government records" covered under OPRA; and (3) to assure consistency, the trial court's redactions of related IA documents should be held in abeyance and re-evaluated by the Prosecutor's Office, as custodian of records, regarding to what extent redactions are warranted under the pertinent statutes and the common law. The Appellate Division further ordered that its decision would be held in abeyance pending any review by the Supreme Court, if sought.