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DATE: April 23, 2026

TO: Commissioners

FROM: Counsel Staff

SUBJECT: Developments in Counsel's Office since March 26, 2026

Commission Cases

Appeals from Commission Decisions

In re City of Linwood, 2025 N.J. Super. Unpub. LEXIS 1769 (App. Div. September 29, 2025)

The New Jersey Supreme Court issued an order denying appellant Jay Loder's Petition for Certification seeking review of the appellate court's affirmance of the Director of Arbitration's decision, DA-2025-001, which dismissed as untimely Loder's Special Disciplinary Arbitration Request to appeal his termination as a firefighter with the City of Linwood.

In the Matter of James MacCarthy and Eastampton Tp. Ed. Ass'n, App. Div. Dkt. No. A-1494-24, PERC Dkt. No. CI-2023-027

Oral argument is scheduled for April 21 in cross-appeals from a Commission decision, P.E.R.C. No. 2025-21, 51 NJPER 186 (¶47 2024). James MacCarthy appeals from that part of the decision 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. The Association appeals from that part of the decision which sustained MacCarthy's charge that the Association prohibited him from seeking union elected office because he filed the unfair practice charge.

Commission Court Decisions

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

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

Trial Court finds New Jersey Wage and Hour Law overtime provisions apply to municipal firefighters and invalidates contrary CNA provisions.

Evans et al. v. City of Paterson, Dkt. No. PAS-L-1915-23 (Law Div., Passaic 2026)

The Law Division of the Passaic County Superior Court grants summary judgment in favor of the class of firefighters employed by the City of Paterson. The lawsuit alleged that the City violated the New Jersey Wage and Hour Law (NJWHL) by failing to compensate employees at the appropriate overtime rate after 40 hours of work. The firefighters were covered by a collective negotiations agreement (CNA) that required a 24-hours-on, 72-hours-off schedule, averaging about 42 hours per week. The CNA provided that overtime would only be paid after 42 hours in a week and calculated pay in a way that could average hours across multiple weeks. The case is limited to time worked after the 2019 amendments to the NJWHL, which expanded the definition of "employer" to include municipalities. The Plaintiffs argued that the NJWHL is a remedial statute that must be interpreted broadly, and that unlike the federal Fair Labor Standards Act, there are no exceptions to the regular 40-hour rule for firefighters and that employers cannot rely on collective bargaining agreements to provide less protection than state law requires. The City argued that the NJWHL either did not clearly apply to firefighters or should be interpreted alongside the FLSA. The City also relied on DOL regulations promulgated before 2019 in support of its position. The court granted the plaintiffs' motion for partial summary judgment, finding that the NJWHL clearly applies to municipalities and their employees, including firefighters, and that the 2019 amendment controls over any

inconsistent or outdated regulations, and terms of the CNA. The court held that the law requires overtime pay for all hours worked over 40 in each individual workweek and explicitly prohibits averaging hours across multiple weeks and rejected the City's reliance on the FLSA, explaining that federal law does not preempt state law where the state provides greater employee protections and that the Legislature did not adopt the FLSA's special overtime rules for firefighters.

Pennsylvania Supreme Court limits remedy in breach of duty of fair representation lawsuit against union, finds public employer indispensable party in arbitration of the claim

Gustafson v. AFSCME Council 13, et al., 349 A.3d 970, (Pa. Supreme, 2026)

The Pennsylvania Supreme Court reverses the Commonwealth Court, finding that where a public employee sues a union for the breach of the duty of fair representation based on discriminatory handling of a grievance, the employee's remedy is limited to an order compelling arbitration, rather than monetary damages. The Court further found that the public employer is an indispensable party because an order compelling arbitration solely involving the union would be meaningless. Penny Gustafson is an employee of the Commonwealth at a facility that provides support to people with intellectual disabilities. Gustafson is a member of a bargaining unit represented by AFSCME Council 13 and affiliated subordinate organizations, but resigned her membership with the union in June 2019 after the US Supreme Court *Janus* decision. In October 2019, Gustafson was not permitted to work "on the floor" and was ineligible for overtime. A grievance was filed, and processing was delayed due to the COVID-19 pandemic. A mid-level union official was eventually contacted regarding the status of the grievance, and he referred to Gustafson as a "free rider" and, in a subsequent conversation, stated she would receive minimal or limited representation because she was not a member. Gustafson then filed a complaint in Common Pleas court against AFSCME seeking damages but did not request an order compelling AFSCME to bring her grievance to arbitration. The trial court dismissed the complaint with prejudice, and Gustafson appealed. The Commonwealth Court reversed, finding the complaint, solely against AFSCME and only for damages related to its breach of the duty of fair representation, could proceed to discovery in the lower court. The Supreme Court reversed, finding that this procedure would require a court, and not an arbitrator, to determine whether the underlying grievance was meritorious. Unlike federal law, Pennsylvania law requires the arbitration of public sector labor disputes, thus, the only available remedy to Gustafson is to arbitrate her claims. The Court further determined that the employer is an indispensable party to the

arbitration, because the employer, under these facts, would be liable for its damages, and the union, for its apportioned share, for delaying the arbitration.

Divided Third Circuit finds "zipper" clause in CBA precluded arbitration of health benefits funding dispute that arose from past arbitration award and not terms of current CBA

IBEW Local 29 v. Energy Harbor Nuclear Corporation, 2026 U.S. App. LEXIS 8509 (3d. Cir. 2026) (Dkt. No. 25-1066)
The Third Circuit, in a non-precedential opinion, finds that a grievance filed by IBEW Local 29 against Energy Harbor Nuclear Corporation over employer contributions to a union health care plan was outside the scope of the arbitration clause in the parties' collective bargaining agreement (CBA). This dispute arose after a 2022 arbitration award found that Energy Harbor had underpaid its healthcare contributions for the prior year, then entered into a new CBA. In 2022, the union filed a grievance claiming the company failed to properly increase contributions by factoring in the prior arbitration award, and Energy Harbor refused to arbitrate, claiming it was outside the scope of the agreement. The district court ruled in favor of the union and ordered arbitration. The Third Circuit reversed that decision, holding that even though the arbitration clause was broad, the matter was not contractually arbitrable. The CBA contained a "zipper" or "merger" clause which stated "any and all prior agreements, whether reduced to writing or not" were "null and void and of no further force" unless identified and appended to the new CBA. In this case, the majority found the union's claim depended on the prior arbitration award and earlier agreements, not on any right created by the new CBA. The agreement only required contribution increases if the company's own health care costs increased, and there was no evidence that such an increase occurred. As a result, the grievance did not truly involve interpreting or applying the CBA, and the court dismissed the case.

Appellate Division dismisses appeal of CSC final agency decision rejecting county employee's claim he was improperly dismissed during working test period for protected union activity

IMO Rindosh and Burlington County, 2026 N.J. Super. Unpub. LEXIS 456, (App. Div. 2026) (Dkt No. A-1322-24)

The Appellate Division, in an unpublished opinion, dismisses Gregory Rindosh's appeal from a final agency decision of the New Jersey Civil Service Commission (CSC) upholding his removal from

a fiscal analyst position with Burlington County during his ninety-day working test period. Rindosh had previously worked in a similar role for a different employer, and then as a provisional employee for over a year for the County due to the COVID-19 pandemic. During his employment, Rindosh also engaged in protected activity with his union, by attending contract negotiations and grievance meetings. Eventually, the CSC certified an eligibility list, which included Rindosh, and his working test period began. At the end of that period, Rindosh was dismissed from the position due to poor performance and work habits. Rindosh appealed and the matter was referred to an ALJ for adjudication. Rindosh claimed his lengthy service in provisional status entitled him to permanent status and that his dismissal was unlawful retaliation for being an active union member. The Administrative Law Judge (ALJ) found the evidence on performance and alleged retaliation to be balanced but concluded that Rindosh failed to meet his burden of proving bad faith or anti-union animus by a preponderance of the evidence. The Appellate Division affirmed the CSC's adoption of the ALJ's decision, finding the agency's conclusions were supported by substantial evidence and were not arbitrary, capricious, or unreasonable. The court rejected Rindosh's arguments that he had attained permanent status or was wrongfully terminated, emphasizing that provisional employment does not grant tenure protections and that termination during a working test period is permissible absent proof of bad faith.

Appellate Division reverses dismissal of OPRA lawsuit, remands to trial court for *in camera* review of written materials provided in training course for deputy attorneys general

Ass'n for Gov't Responsibility v. New Jersey Office of Attorney General, 2026 N.J. Super. Unpub. LEXIS 618 (App. Div. 2026) (Dkt. No. A-0716-24)

The Appellate Division, in an unpublished opinion, reverses and remands a decision of the trial court dismissing an Open Public Records Act (OPRA) lawsuit filed by the Association for Governmental Responsibility, Ethics and Transparency against the Office of the Attorney General. The OPRA request in question sought training materials provided to deputy attorneys general as part of internal continuing legal education courses provided to the DAGs. The Department of Law and Public Safety denied the request, claiming that the information sought was attorney work product and not subject to disclosure. The trial court found, without performing an in camera review, that the training materials included statements of legal strategy, attorney work

product, or other privileged material and dismissed the case. The Appellate Division reversed, finding that without an in camera review, the record was incomplete in determining whether an exemption to OPRA applied, either in whole or in part, to the documents sought, and whether the plaintiffs were entitled to the materials under the common law right of access.