



**STATE OF NEW JERSEY
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DATE: May 20, 2026
TO: Commissioners
FROM: Counsel Staff
SUBJECT: Developments in Counsel's Office since April 23, 2026

Commission Cases

Appeals from Commission Decisions

No new appeals have been filed since April 23.

Commission Court Decisions

In re State, ___ N.J. Super. ___, 2026 N.J. Super. LEXIS 44 (App. Div. 2026)

In a published decision issued on April 17, 2026, the Appellate Division of the Superior Court affirmed a Commission decision, State v. Council of N.J. State College Locals, AFT and CWA, AFL-CIO, 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 Commission found that twenty-eight employees working in eleven positions at three State colleges and universities (Kean and Montclair State universities, and The

College of New Jersey), can be members of various units because their job duties do not satisfy the managerial executive exception which precludes union membership for "persons who formulate management policies and practices" and have "the responsibility of directing the effectuation of such management policies and practices." In affirming, the Appellate Division rejected the State's contentions that PERC erred in making that determination and in interpreting the New Jersey Employer-Employee Relations Act (Act) to require that managerial executives who formulate policies without independent review from others can join the unions. The court found PERC's ruling is not arbitrary, capricious, or unreasonable because it is consistent with the record and the applicable law, in particular a 2010 amendment to the Act which narrowed the definition of "managerial executive" for non-State public employers.

Oral argument

Oral argument is scheduled for June 3, 2026, in the matter of County of Essex and FOP Lodge 106, P.E.R.C. No. 2026-1, 52 NJPER 72 (¶17 2025), in which the FOP appeals from the Commission's restraint of binding arbitration of the FOP's challenge to the County's refusal to provide health insurance waiver opt-out payments to FOP members who received alternate State Health Benefits Plan health coverage through a spouse.

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

Appellate Division affirms dismissal of two dispatchers who routinely abandoned their post

IMO Talaya Woods and Shauna Ingram, 2026 N.J. Super. LEXIS 672 (App. Div. 2026) (App. Div. Dkt. No. A-0787-24)

The Appellate Division, in an unpublished opinion, affirms the CSC's final agency action upholding the dismissal of two dispatchers employed by the Trenton Police Department. The City terminated the employment of the dispatchers after an internal affairs investigation concluded that the dispatchers would abandon their posts to go on outdoor walks, sometimes for over an hour. The investigation concluded that at least 166 emergency calls went unanswered or were diverted to other municipalities. The dispatchers contested the terminations, claiming that a memorandum forbidding them from leaving their desks was not in effect at the time of the termination and was not enforced. An ALJ's decision, which was adopted by the CSC,

determined the discipline imposed was appropriate. The Appellate Division affirmed, finding that the CSC's decision was not arbitrary or capricious and was entitled to deference.

Appellate Division affirms dismissal of police officer who admitted to off-duty purchase of marijuana from an unlicensed source in violation of controlling state law that was not preempted by a federal gun law

IMO Montavious Patten, 2026 N.J. Super. LEXIS 862 (App. Div. 2026) (App. Div. Dkt. No. A-3126-23)

The Appellate Division, in an unpublished opinion, affirms the CSC's final agency action upholding the dismissal of a Jersey City Police Officer, who purchased marijuana from an unlicensed individual. The City dismissed the officer initially for testing positive for marijuana and for purchasing it from an unlicensed source. Patten contested the termination before an ALJ, who determined that the City improperly disciplined him for simply testing positive for marijuana, where the New Jersey Cannabis Regulatory, Enforcement Assistance, and Marketplace Modernization Act (CREAMMA), N.J.S.A. 24:6I-31 to -56, and a related AG Directive explicitly allows police officers to use marijuana off duty. The ALJ also rejected the argument that the federal Gun Control Act (GCA) preempted the same state statute. However, the ALJ upheld Patten's termination based on his purchase of unregulated cannabis from his friend whose last name and phone number he did not know. The CSC affirmed on the same basis. Patten appealed, and Jersey City cross appealed. The Appellate Division affirmed, finding that Patten had adequate notice of the charges brought against him, and finding that the GCA, in general, did not apply to police officers, and thus, did not preempt CREAMMA.

Appellate Division affirms reinstatement of two police officers dismissed for testing positive for marijuana, as their off-duty use did not violate controlling state law that was not preempted by a federal gun law

IMO Norhan Mansour and Omar Polanco, 2026 N.J. Super. LEXIS 865 (App. Div. 2026) (App. Div. Dkt. No. A-3876-23/A-3886-23)

The Appellate Division, in an unpublished opinion, affirms the CSC's final agency action upholding the reinstatement of two Jersey City Police Officers who were dismissed for testing positive for marijuana. There were no allegations that the officers used the drug at work or purchased it from an unlicensed source. The two officers appealed their suspensions, and an ALJ determined that the City's actions violated N.J.S.A. 24:6I-31 to -56, which prohibits employers from taking an adverse employment

action against an employee for off-duty marijuana usage. The ALJ also determined that the federal Gun Control Act (GCA) did not preempt N.J.S.A. 24:6I-31 to -56 (CREAMMA), because the federal law's provisions do not apply to state or municipal police departments, and reinstated the two officers. The CSC affirmed, as did the Appellate Division, for similar reasons.

Third Circuit affirms dismissal of lawsuit brought by police officer and union official contesting change that ended practice of double payment for work performed in extra duty assignments

Lyak v. Hackensack et al., 2026 U.S. App. LEXIS 9719 (3d. Cir. 2026) (Dkt. No. 25-1548)

The Third Circuit, in a non-precedential opinion, affirms the District Court's order dismissing Reuven Lyak's lawsuit against the City of Hackensack for allegedly retaliating against him for protected speech and association. Lyak is a union representative for police officers employed by the City. In 2022, an audit of the police department revealed that "extra duty details" were allowing certain police officers to clock in to their regular shift, then work on an extra duty detail without clocking out.

As a result, the officer would get paid twice for the same work. Police leadership was changed, and a new policy prohibiting this practice was put into place. Lyak and other union officials opposed and criticized the change. After the new policy was implemented, Lyak was involuntarily transferred twice, allegedly to lower positions, and "written up" for allegedly violating the extra duty policy. Lyak then sued, alleging the City violated his first amendment rights by retaliating against him for speaking as a union official. The District Court, as affirmed, dismissed the lawsuit because (1) Lyak spoke as a private citizen on a matter directly related to his employment, and the state's interest outweighed his personal interests, (2) he did not plead sufficient facts to establish a causal link between constitutionally protected conduct and the alleged retaliatory actions, (3) he did not plausibly allege a deprivation of a liberty or property interest or that his due process rights were violated, and (4) he did not plead sufficient facts showing a discriminatory animus against union leaders.

Appellate Division reverses and remands lawsuit seeking certain Internal Affairs records sought by Public Defender under the common law right of access

New Jersey Office of the Public Defender vs. New Jersey Department of Law and Public Safety, 2026 N.J. Super. LEXIS 757 (App. Div. 2026) (App. Div. Dkt. No. A-1041-24)

The Appellate Division, in an unpublished opinion, remands to the trial court for further proceedings on the Public Defender's request for documents of certain police Internal Affairs (IA) records under the common law right of access. The Public Defender sought the "Appendix K" document maintained by Essex County, which includes a list of open and pending IA investigations for agencies within the county. It contains the nature, source, and outcome of the allegations, and the names of all agency members involved. Appendix K also identifies complaints the target officer may not have knowledge of. The Attorney General did not produce the complete document and the instant lawsuit compelling release of the documents commenced.

The trial court determined that the Public Defender was not entitled, either under the rules of criminal discovery, or the common law right of access, to the information. In part, the trial court determined the action was not a proper vehicle for the Appendix K documents where the Public Defender has access to discovery through criminal procedure. The Appellate Division reversed, finding that criminal procedure has no bearing on a request for documents under the common law right of access and that the Public Defender should not be treated differently from any other member of the public, especially where it serves an important institutional role. It remanded the matter to the trial court for clarification of the records sought, a new analysis under the common law right of access, and an in camera review of the records and release with redactions if necessary.

Appellate Division affirms order permitting retired Deputy Police Chief to challenge finding of misconduct to protect himself from reputational harm

Fred Reck v. Monmouth County Prosecutor's Office, 2026 N.J. Super. LEXIS 756 (App. Div. 2026) (App. Div. Dkt. No. A-1734-24)

The Appellate Division, in an unpublished opinion, affirms a trial court order permitting a former Deputy Police Chief of Marlboro Township to contest sustained findings of misconduct against him even though he resigned from his position. In lieu of receiving discipline after the Monmouth County Prosecutor determined he engaged in misconduct, Reck resigned from his position pursuant to a settlement agreement with Marlboro Township. The agreement provided that formal disciplinary charges would not be brought against him and he would not file

any lawsuit related to his employment. However, Reck still sought to contest the findings against the county from the IA investigation to protect himself from reputational harm. The County determined he was not eligible to do so because he resigned. The trial court, as affirmed by the Appellate Division, concluded that the Attorney General's IA Procedures and Policies provided him with a mechanism to challenge the County's findings, and that a Superior Court action in lieu of prerogative writs was one of those approved forums.