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DATE: August 19, 2026

TO: Commissioners

FROM: Counsel Staff

SUBJECT: Developments in Counsel's Office since June 25, 2026

Commission Cases

Appeals from Commission Decisions

No new appeals were filed since June 25.

Commission Court Decisions

In re MacCarthy, 2026 N.J. Super. Unpub. LEXIS 1296 (App. Div. 2026) (App. Div. Dkt. No. A-1494-24)

The Appellate Division of the Superior Court, in an unpublished opinion, affirms the Commission's decision, P.E.R.C. No. 2025-21, 51 NJPER 186 (¶47 2024), upholding the Commission's rulings that the Eastampton Education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 member; but that the Association committed an unfair practice when it required MacCarthy to dismiss his charges in order to run for union office. The Appellate Division found substantial credible evidence supported the decision, which was consistent with the Act's provisions and was not arbitrary, capricious or unreasonable.

In re Rutgers, 2026 N.J. Super. Unpub. LEXIS 1350 (App. Div. 2026) (App. Div. Dkt. No. A-2430-24)

The Appellate Division of the Superior Court, in an unpublished opinion, affirms the Commission's decision, P.E.R.C. No. 2025-29, 51 NJPER 287 (¶65 2025), which denied Rutgers' request for a restraint of binding arbitration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 court found no error of law or abuse of discretion in the Commission's reasoning that major discipline like termination is subject to the grievance procedures in the CNA, and an arbitral decision on a discipline imposed for a violation of Rutgers' vaccine policy would not interfere with Rutgers' right to have and enforce its policy. The court also rejected Rutgers' arguments that the Commission failed to properly balance the parties' interests, or that it misconstrued and failed to follow relevant legal precedent.

In re Cty. of Essex, 2026 N.J. Super. Unpub. LEXIS 1545 (App. Div. 2026) (App. Div. Dkt. No. A-0377-25)

The Appellate Division of the Superior Court, in an unpublished opinion, affirms the Commission's decision, P.E.R.C. No. 2026-1, 52 NJPER 72 (¶17 2025), restraining arbitration of FOP 106's grievance challenging the County of Essex's refusal to reimburse health insurance opt-out payments to FOP 106 union members who received State Health Benefits Plan (SHBP) coverage through a spouse. The Commission held a statute and regulation that explicitly barred such opt-out payments by SHBP-participating employers preempted arbitration of the County's denials of them after it switched from a private carrier to the SHBP. The Commission rejected the FOP's claim that the denials were arbitrable because they allegedly violated a remedial order issued by the Commission in a prior related unfair practice proceeding.¹ The remedial order required the County to establish a fund to reimburse FOP 106 employees for costs or losses (such as increased doctor office and emergency room co-payments and losses of coverage for prescription drugs) resulting from the County's unilateral change in carriers. In affirming the Commission's scope decision, the Appellate Division endorsed PERC's argument that the loss of the opt-out payments did not

¹P.E.R.C. No. 2023-60, 50 NJPER 43 (¶15 2023), aff'd, Cty. of Essex, 2024 N.J. Super. Unpub. LEXIS 811 (App. Div. 2024).

flow from a decrease in the level of health benefits, the focus of the remedial order. It also agreed with the Commission that arbitration of FOP 106's grievance on its claims over the opt-out payments was preempted and expressly barred by the relevant statute and regulation.

In re Twp. of Clinton and Stephen Hars, 2026 N.J. Super. Unpub. LEXIS 1556 (App. Div. 2026) (App. Div. Dkt. No. A-3962-23)

The Appellate Division of the Superior Court, in an unpublished opinion, affirms final agency decisions by the Director of Conciliation and Arbitration denying Hars' request to appoint a Special Disciplinary Arbitrator (SDA) to review the termination of his employment as a police officer for Clinton Township, a non-civil service municipality, and denying Hars' motion for reconsideration of that decision. The Township terminated Hars' employment after he was brought up on disciplinary charges and was given an administrative hearing at which he was found to have engaged in the reckless use of firearms when responding to two separate incidents involving wild animals, and to have then knowingly falsified the number of rounds he fired during each incident. The Director found that under the relevant statute Hars was ineligible for SDA because the charges related to conduct that would constitute a violation of the criminal laws of New Jersey. The Appellate Division found the record supported that determination because, as the hearing officer found, Hars was alleged to have knowingly made false statements in official police department records, which constitutes tampering with public records or information, a violation of the criminal code, regardless of whether any criminal process commenced. The court also found the Director properly rejected Hars' reconsideration request.

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

Law Division dismisses Rutgers' Challenge to applicability of 2021 subcontracting amendments to EERA

Rutgers v. Health Professionals and Allied Employees, AFT/AFL CIO, (Law Div. Middlesex Cty. June 11, 2026) (Dkt. No. MID L-1244 24)

The Superior Court of New Jersey, Law Division, Middlesex County in a detailed written opinion, dismissed with prejudice Rutgers' Verified Complaint seeking a declaratory judgment that the 2021 subcontracting amendments to the New Jersey Employer Employee Relations Act (NJEERA), N.J.S.A. 34:13A 50 to 55, are unconstitutional as applied to the University. Rutgers argued that the subcontracting restrictions enacted in 2021 violated the

Rutgers Act and the Contracts Clauses of the United States and New Jersey Constitutions. The Health Professionals and Allied Employees (HPAE) and the Attorney General intervened in opposition. The Court first determined that interpretation of the statutory phrase "affects the employment" under N.J.S.A. 34:13A 52 was a judicial function and not within the exclusive jurisdiction of PERC. After reviewing the statutory scheme, the Court held that the 2021 Amendments apply only where subcontracting "replaces or displaces" bargaining unit employees and that the Legislature's remedial focus—reinstatement, recall rights, and back pay—confirms a narrow application tied to actual employee displacement. Turning to Rutgers' reliance on the Rutgers Act, the Court rejected the contention that the Amendments impermissibly intruded upon the University's governance autonomy. The Judge concluded that the Rutgers Act protects Rutgers' independence in structural governance and control of property but does not extend that autonomy to day to day operational matters, including labor relations and subcontracting decisions. The Court emphasized that operational labor matters fall within the authority of the University President, not the Board of Governors, and therefore the 2021 Amendments do not alter the governance structure protected by the Rutgers Act. On Rutgers' Contract Clause claim, the Court found no substantial impairment. With the exception of one dining services subcontract that displaced employees, Rutgers presented no evidence of any actual impairment arising from the Amendments. The statutory requirements—90 day notice to affected unions, an offer to meet, and good faith consultation—were found to be reasonable procedural safeguards consistent with sound labor relations policy and fully within Rutgers' control. The Court also determined that the Amendments were foreseeable given Rutgers' longstanding status as a public employer under NJEERA, the 2012 restructuring legislation expressly referencing those obligations, and prior statutory expansions of subcontracting restrictions to other public educational institutions. Concluding that Rutgers failed to demonstrate a constitutional violation, the Court dismissed the Verified Complaint with prejudice and rendered moot the motions to dismiss filed by HPAAE and the Attorney General.

New Jersey Supreme Court affirms denial of contractual extra pay to school custodians who reported to work when school facilities were closed to students during COVID-19 state of emergency

E. Orange Educ. Support Professionals' Ass'n & E. Orange Maint. Ass'n v. E. Orange Bd. of Educ., 2026 N.J. LEXIS 710 (N.J. S.Ct. 2026) (Dkt. No. A-79-24)

By a vote of six to one (with Chief Justice Rabner dissenting), the Supreme Court of New Jersey affirms an Appellate Division decision, 2025 N.J. Super. Unpub. LEXIS 282 (App. Div. 2024), that reversed a Chancery court's confirmation of a grievance arbitration award enforcing the contractual payment of extra compensation to custodial employees of the East Orange Board of Education who reported to work when school facilities were closed to students during the COVID-19 state of emergency. The Appellate Division vacated that aspect of the award, finding it was not reasonably debatable as the parties' collective negotiations agreement (CNA) (which entitled working employees to such extra compensation when "schools are closed for an emergency") directly conflicted with public policy embodied in a statute enacted at the start of the COVID-19 state of emergency, N.J.S.A. 18A:7F-9. Subsection (e) of this law required that when school facilities are closed for an extended period due to a state of emergency, school employees shall be compensated "as if the school facilities remained open for any purpose." The Supreme Court agreed, adding in its majority decision that because the statute's plain language is clear, it would not consider contradictory legislative history noted by the dissent that very generally states that "[n]othing in the bill" limits, supersedes, or preempts compensation under a CNA, but that does not expressly distinguish the statutory subsections, unlike the enacted law. The majority opinion explained that the law expressly lists only subsections (b), (c), and (d) of the statute as not preempting a CNA's provisions and specifically omits from that list subsection (e). The majority found this clearly evidenced a legislative intent that subsection (e), unlike the other listed subsections, must be followed over contrary CNA provisions. The majority also found it "hard to imagine" that the legislative history "could be as controlling as the dissent posits when no party raised it and it is not mentioned in any prior decision."

Law Division dismisses lawsuit against Rutgers employee unions alleging 2023 strike action harmed students

Jeremy Li v. Rutgers Council of AAUP-AFT Chapters, et al., (L. Div. Dkt. No. MID-L-1700-24)

The Law Division of the Superior Court, in an unpublished opinion, dismisses with prejudice the complaint of Jeremy Li, a student at Rutgers University, against the defendants, several individuals and labor union entities. Li sought class certification, seeking to be a class representative for an estimated 57,000 Rutgers students allegedly adversely affected

by a strike conducted by Rutgers employee unions in April 2023. The alleged harm included the loss of classes, resulting alteration of the schedule for the semester, and emotional distress. Ruling on various defense motions to dismiss the complaint, the Law Division found the strike activity was protected speech under the Uniform Public Expression Protection Act (UPEPA), N.J.S.A. 2A:53A-49 to - 61, which "protect[s] residents against frivolous, ill-intentioned lawsuits" intended to curb speech on matters of public concern. The court held UPEPA is to be broadly interpreted to protect free-speech rights and the issue here was one of public concern and value to the general public, based upon Li's allegations that the defendants publicly supported Rutgers unions by speaking at rallies, disseminating information related to the dispute with the University and asking for donations.

Appellate Division affirms interim order granting police officer back pay pending new disciplinary or criminal charges

In re S.J., 2026 N.J. Super. Unpub. LEXIS 1400 (App. Div. 2026) (App. Div. Dkt. No. A-2333-24)

The Appellate Division of the Superior Court, in an unpublished opinion, affirms a decision by the Civil Service Commission (CSC) granting interim relief to S.J., a captain in the Boonton Police Department. The CSC ordered that Boonton pay S.J. back pay from June 3, 2024 (the date Boonton received notice that certain criminal charges against S.J. had been dismissed), until he is either reinstated, or in the alternative, until Boonton either re-issues certain administrative charges or brings new ones against S.J. The initial administrative charges were based upon a complaint another officer filed with the Morris County Prosecutor's Office, accusing S.J. of misconduct and violating departmental rules. After issuing a preliminary notice of disciplinary action (PNDA), Boonton suspended S.J. with pay pending a hearing for the conduct alleged. Before being suspended, S.J. removed his personnel and internal affairs files, confidential records, and computers from police headquarters. This resulted in him being criminally charged with computer criminal activity, theft, and tampering with public records. Boonton then issued S.J. further PNDAs modifying his suspension to one without pay pending disposition of the criminal charges and newly filed administrative charges. The Police Training Commission (PTC) also suspended S.J.'s law enforcement license, based on the pending criminal charges. But the criminal charges were dismissed without prejudice, and the prosecutor's office ultimately determined it would not pursue them, whereupon the PTC

restored S.J.'s law enforcement license. Despite this, Boonton continued S.J.'s unpaid suspension, refused to reinstate him, and claimed it would pursue additional administrative charges against him. In affirming, the Appellate Division found the CSC's interim decision was based upon substantial credible evidence in the record and did not violate any express or implied legislative policies. The court found the basis for the suspension without pay ended when the Law Division dismissed the criminal charges, and the prosecutor's office ultimately declined to pursue criminal prosecution. It found S.J. was never terminated by Boonton and remains an employee of the Boonton Police Department, and Boonton failed to issue another PNDA identifying the remaining disciplinary charges after the criminal charges were dismissed. Therefore, the court ruled, the CSC's decision to award back pay was proper because Boonton could not continue to suspend S.J. without issuing a separate PNDA specifying the remaining charges.

Appellate Division affirms restoration to firefighter eligibility list after disputed psychological fitness exam

In re T.T., 2026 N.J. Super. Unpub. LEXIS 1537 (App. Div. 2026) (App. Div. Dkt. No. A-0161-24)

The Appellate Division of the Superior Court, in an unpublished opinion, affirms a final agency decision of the Civil Service Commission (CSC), reinstating respondent T.T. to the firefighter eligibility list for the Township of Teaneck following a protracted dispute regarding T.T.'s psychological fitness for appointment. After the Township's psychologist concluded T.T. was not psychologically suited for the position and recommended that he be removed from the certified list of candidates, T.T. requested an appeal before the CSC's Medical Review Panel (MRP), which the CSC granted. It also allowed T.T. to submit to the MRP a psychological evaluation by his own psychologist, who recommended him for appointment. After considering both expert reports, the MRP recommended that T.T. should have a third, independent evaluation. The CSC accepted the recommendation over both T.T. and the Township's objections and further directed the Township to pay the cost for the third evaluation. The Township requested partial reconsideration of the cost issue. The third psychologist concluded T.T. was psychologically suitable for employment as a firefighter. After neither party filed exceptions, the CSC issued its final decision granting T.T.'s appeal and denying the Township's request for reconsideration. In affirming, the Appellate Division concluded that the CSC complied with its regulatory obligations to assess T.T.'s merit

and fitness for the firefighter position, and there was sufficient credible evidence in the record to support its final determination.

Appellate Division affirms CSC's removal of names from police officer eligibility list, refusal to extend appeal deadline

In re D.G. and D.P., 2026 N.J. Super. Unpub. LEXIS 1550 (App. Div. 2026) (App. Div. Dkt. Nos. A-1323-24, A-1324-24)

The Appellate Division of the Superior Court, in an unpublished opinion on consolidated appeals filed by D.G. and D.P., affirms a final agency decision of the Civil Service Commission (CSC), which denied their requests to reopen their appeals of the removal of their names from the eligible list of police officers for Union Township. The court rejected the appellants' challenge to the CSC's determination that there was no good cause to extend their time to submit psychological reports to rebut those of the Township opining they were unfit to serve as police officers. The Appellate Division ruled it was not arbitrary or capricious for the CSC not to extend the deadline, because the 90-day period for submission of their rebuttal expert reports commenced with the filing of their appeals, not the date the appointing authority filed its submissions, and nothing foreclosed appellants from timely doing so. The court also found CSC properly upheld the Township's request for the removal of their names from the list because it timely submitted the necessary documentation. Finally, the court found the appellants offered no evidence to suggest no prejudice would result to the CSC or Township if appellants' rebuttal deadlines were extended, and their arguments to the contrary were merely speculative.

Third Circuit enforces grievance arbitrator's back-pay award in disciplinary dispute

McGuire Mem'l v. Teamsters Loc. 261, Int'l Bhd. of Teamsters, 2026 U.S. App. LEXIS 20610 (3d. Cir. 2026) (Dkt. No. 25-2912)

The Third Circuit Court of Appeals, in a non-precedential opinion, vacates and remands a District Court order that granted McGuire Memorial's petition to vacate an arbitration award and denied Teamsters Local 261's petition to confirm it. The underlying dispute concerned a decision by McGuire (an operator of facilities caring for clients with physical and mental disabilities) to suspend an employee following a client's report of abuse. After an investigation the allegations were deemed unfounded. McGuire then reinstated the employee and paid her for

the scheduled regular shifts she had missed but not her previously scheduled overtime shifts. Teamsters filed a grievance on her behalf for the unpaid overtime shifts, arguing she was suspended without just cause in violation of the parties' collective bargaining agreement (CBA). The arbitrator awarded the grievant the overtime pay, concluding the unpaid suspension violated the CBA's disciplinary just-cause requirement, and that when discipline is reversed or overturned, the employer is required to make the employee whole for all losses. The arbitrator rejected McGuire's argument that the just-cause provision was superseded by a CBA clause giving it the right to determine "the means for compliance" with government regulations, arguing the suspension was how it chose to comply with state regulations mandating no contact between an allegedly abused client and the involved staff member. The District Court vacated the award, finding the CBA granted McGuire sole discretion to determine how it complies with regulations. Reversing, the Third Circuit held the District Court should have enforced the award because the arbitrator's findings were not clearly erroneous and his interpretation of the CBA was arguably supported. The Third Circuit reasoned that the award gave effect to both the "means for compliance" and the just-cause provisions because, under the arbitrator's interpretation, McGuire was still permitted to ensure no contact between the employee and the patient in any way it desired, such as by placing the employee in a non-clinical role or different location, or by suspending her as it did, but only the latter choice triggered its obligation to its employee under the CBA's just-cause provision. The Third Circuit also found the District Court erred in engaging in its own factfinding when it found, contrary to the conclusion of the arbitrator, that "there was never any disciplinary suspension taken against this employee," because that was a question of fact for the arbitrator, and any evidence to dispute it should have been adduced at arbitration. The Third Circuit remanded for an order enforcing the award.

Appellate Division finds schoolteachers' display of local board candidates' campaign signs under car windshields while parked in school parking lot during school day was not protected speech

Ringwood Educ. Ass'n v. Ringwood Bd. of Educ., 2026 N.J. Super. Unpub. LEXIS 1651 (App. Div. 2026) (App. Div. Dkt. No. A-1159-24)

The Appellate Division of the Superior Court, in an unpublished opinion, reverses that part of a trial court order which resolved opposing summary judgment motions in favor of the Ringwood Education Association on its complaint seeking a ruling that the

Board of Education's Policy 3233 (which bars unauthorized political activity on school grounds by school faculty) is unconstitutionally overbroad and infringes on teaching staff members' First Amendment rights. The dispute arose after the Board, upon learning that teachers were placing campaign lawn signs of local Board candidates under their car windshields while parked in a school parking lot during the school day, advised all staff members by email that the practice violated Policy 3233. The trial court found the Policy was unconstitutional both facially and as applied. The Appellate Division found the Board's actions were justified, warranting reversal. It reasoned the Board had the authority to prevent students from being subject to walking by partisan political campaign signs of their teachers on their way into school every morning, and the Policy did not preclude speech between teachers on lunch breaks or prevent them from speaking at board meetings or distributing political literature when not on school property. As such, the court found, the Policy did not significantly limit teachers' speech beyond that enjoyed by the general public. The court further found that the posting of lawn signs was not solely the result of teachers wanting to express their views about a matter of public concern but was predominately job-related in seeking to promote their self-interest in the context of labor and other negotiations with the Board. The Appellate Division otherwise upheld the trial court's summary dismissal of the Association's related retaliation claim, which it did not raise until the summary judgment stage, and which it withdrew at oral argument as moot.

Appellate Division upholds CSC's denial of administrative appeal in firefighter promotional test-scoring dispute

In re Morton, 2026 N.J. Super. Unpub. LEXIS 1660 (App. Div. 2026) (App. Div. Dkt. No. A-0803-24)

The Appellate Division of the Superior Court, in an unpublished opinion, affirms a final agency decision of the Civil Service Commission (CSC) denying Morton's administrative appeal of the scoring of his promotional examination for the position of Fire Officer 1 at North Hudson Fire and Rescue. Morton argued he received an erroneously low score on the technical component of a section of the oral examination that was designed to measure Morton's knowledge of safe rescue tactics and procedures through his responses to questions based upon a hypothetical fire scene. He maintained that a certain firefighting textbook, which was suggested reading for candidates, supported his contention that his responses should have received a higher score. The CSC

addressed Morton's appeal at a hearing that allowed candidates to listen by phone (but did not allow oral argument) and later issued its written determination. It addressed in detail each of Morton's contentions on appeal, citing portions of the textbook that contradicted Morton's arguments, and found he failed to meet his burden of proof. After the CSC's decision, Morton contacted the Office of the Attorney General (AG) seeking a scoring sheet he claimed was used by the test evaluator but was told the AG did not have the document. In affirming, the Appellate Division held: (1) there was no error in the CSC's decision, which was anchored in the record and adequately explained its findings; (2) there was no due process violation by the CSC's not entertaining oral argument, given that Morton was permitted to present his written argument and any supporting evidence he elected to submit, and the CSC then addressed in detail all his arguments including his supporting textbook citations; and (3) the withholding of the requested scoring sheet provided no basis to conclude Morton was denied adequate opportunity to otherwise review his oral examination results prior to his appeal.

Appellate Division rules arbitrator's 20-year prior employment as corporate counsel for different, non-party private hospital was not a conflict of interest that should have been disclosed to parties prior to hearing employment discrimination dispute

Gray v. Univ. Hosp., 2026 N.J. Super. LEXIS 76 (App. Div. 2026) (App. Div. Dkt. No. A-1993-24)

The Appellate Division of the Superior Court, in a published opinion, affirms a trial court's dismissal of a complaint filed by Gray against University Hospital, alleging violations of the New Jersey Law Against Discrimination (NJLAD). The Appellate Division found the complaint sought to relitigate claims by Gray that were fully adjudicated during an arbitration proceeding. The Appellate Division also upheld the arbitration award and the trial court's denial of Gray's request to vacate it or remove the arbitrator on the grounds of an alleged conflict of interest. The underlying dispute arose when Gray, while in the employ of a staffing agency and on a temporary assignment at the hospital as an administrative assistant, claimed she was sexually harassed and retaliated against by the hospital's director of finance. Gray's complaint, initially filed in court, was eventually submitted to arbitration under the applicable American Arbitration Association (AAA) rules, based upon an agreement Gray had signed with the staffing agency when it hired her. The parties' jointly chosen arbitrator (a retired judge) summarily dismissed Gray's retaliation claim and, after a three-day

hearing, dismissed her other claims in a final decision and award. Gray then filed a second complaint in court, alleging nearly identical NJLAD claims, and seeking to vacate the arbitration award and remove the arbitrator. Gray argued the award should have been vacated because the arbitrator did not disclose his prior long-term employment relationship with Chilton, a private hospital, who was previously sued by her counsel, which would have led her to object to his appointment. The Appellate Division held: (1) the arbitrator's 20-year prior employment as corporate counsel for a different, non-party private hospital was not a conflict of interest that should have been disclosed prior to arbitration; (2) Gray's request to vacate the award was procedurally deficient because she did not file with her verified complaint an order to show cause seeking that relief, as required by court rules and New Jersey Arbitration Act (NJAA); and (3) under both AAA rules and the NJAA, Gray waived any objection by not timely doing so after the arbitrator disclosed his prior employment in casual conversation with Gray's counsel, which occurred before the record closed and the final award was issued.