



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

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DATE: April 25, 2024  
TO: Commissioners  
FROM: Counsel Staff  
RE: Developments in Counsel's Office since March 28, 2024

**Commission Cases**

**Appeals from Commission Decisions**

The Paterson Fire Officers' Association (PFOA), FMBA Local 202, filed an appeal from the Commission's decision, P.E.R.C. No. 2024-41, 50 NJPER 360 (¶86 2024), which affirmed an interest arbitration award, IA-2024-002, that settled successor contract negotiations between the City of Paterson and the PFOA.

Oral argument was heard in the following matters:

PBA Local 29 and Township of Irvington (App. Div. Dkt. No. A-000743-23)

PBA Local 29's appeal from the Commission's decision, P.E.R.C. No. 2024-8, 50 NJPER 189 (¶42 2023), denying the PBA's petition for a restraint of binding arbitration of its grievance challenging the Township of Irvington's deduction of money from the final paychecks of seven PBA members (who resigned within five years after their start date), to recoup training costs expended by the Township;

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Borough of Carteret and Local 67, Firefighters Mutual Benevolent Association (App. Div. Dkt. No. A-001319-22T4)

The Borough of Carteret's appeal from the Commission's decision, P.E.R.C. No. 2023-16, 49 NJPER 266 (¶61 2022), which reversed the Director of Representation's decision that granted the Borough's unit-clarification petition to exclude lieutenants from a negotiations unit of lieutenants and firefighters represented by FMBA, Local 67; and

County of Essex and FOP Lodge 106 (App. Div. Dkt. Nos. AM-0597-22T1, A-003809-22T1)

The County of Essex's appeal from the Commission's decision, P.E.R.C. No. 2023-60, 50 NJPER 43 (¶15 2023), which denied the County's exceptions and partially granted a union's exceptions on a Hearing Examiner's decision on County police and fire unions' consolidated unfair practice charges alleging the County violated the Act when it unilaterally changed health insurance carriers and thereby decreased the level of contractual health benefits. Prior to oral argument, one of the four units, PBA Local 382, settled its claims with the County.

**Commission Court Decisions**

No Commission court decisions were issued since March 28.

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

Appellate Division upholds disciplinary suspension of Department of Corrections internal investigator for falsifying investigative report

In re Dalrymple, 2024 N.J. Super. Unpub. LEXIS 438 (App. Div. Dkt. No. A-0903-22)

The Appellate Division of the Superior Court, in an unpublished opinion, affirms a final agency decision of the Civil Service Commission (CSC) imposing a thirty-day working suspension on Dalrymple, an internal investigator employed by the Department of Corrections (DOC), and denying his request for attorney fees. Dalrymple's investigative report on an inmate's grievance against another officer was found to have falsely concluded that the officer was untruthful in his characterization of the incident. Dalrymple was then terminated on charges of conduct unbecoming a public employee, other sufficient cause; and other departmental policy violations. On Dalrymple's appeal from the termination,

an administrative law judge (ALJ) recommended dismissal of the charges because the record did not support an intentional misstatement of fact by Dalrymple. The CSC modified the ALJ's order and imposed a suspension rather than removal, finding Dalrymple's false statements significant because his entire job was to present as accurate information as possible. In affirming, the Appellate Division held: (1) the CSC did not improperly consider Dalrymple's disciplinary history because it determined, independent of that history, that the current charges warranted a thirty-day suspension; (2) as such, Dalrymple was not prejudiced, and the CSC did not act in an arbitrary, capricious, or unreasonable manner in imposing the suspension; (3) the CSC's denial of counsel fees was appropriate because Dalrymple did not prevail on all or substantially all of the primary issues in the appeal, and major discipline was imposed; and (4) substantial credible evidence demonstrated Dalrymple's investigation report contained fundamental errors that, if never discovered, could have resulted in major discipline and potential criminal charges for the other officer, thus there was ample evidence to support the CSC's decision.

Appellate Division upholds adequacy of response to OPRA request where requestor did not describe government records sought in specific terms

Owoh ex rel. Afr. Am. Data & Rsch. Inst. v. Maple Shade Police Dep't Burlington, 2024 N.J. Super. Unpub. LEXIS 445 (App. Div. Dkt. No. A-3643-21)

The Appellate Division of the Superior Court, in an unpublished opinion, affirms the Government Records Counsel's (GRC's) final administrative determination denying Owoh's request for certain Maple Shade Police Department (MSPD) records under the New Jersey Open Public Records Act (OPRA), and the common law right of access (CLRA). Owoh requested the "reasons for" the separation of certain officers from their employment, but did not request specific records relating to such separations. MSPD replied with a spreadsheet that included responses such as "resigned," "terminated," or "retired" as the reasons. On appeal, Owoh argued that under OPRA, he had the right to inspect redacted copies of actual records, specifically plea agreements and criminal convictions, and that he was entitled to the real reasons for separation under the CLRA, even if the misconduct did not result in a criminal conviction or a plea agreement. In affirming, the Appellate Division held: (1) Under OPRA, a requester is obligated to describe the government record sought in fairly specific terms; (2) Owoh only requested general information, never identified any government records and never clearly and reasonably described with sufficient identifying

information what records he was seeking; (3) thus, GRC did not abuse its discretion when it found the custodian provided Owoh with the "reasons for separation" in accordance with OPRA and controlling case law; (4) the GRC correctly concluded it did not have authority to address Owoh's CLRA claim because its jurisdiction is limited to interpreting the OPRA statute.

Appellate Division affirms applicant's removal from firefighter eligibility list based upon disciplinary history, arrest record

In re Gonzalez, 2024 N.J. Super. Unpub. LEXIS 447 (App. Div. Dkt. No. A-2197-21)

The Appellate Division of the Superior Court, in an unpublished opinion, affirms a final agency decision of the Civil Service Commission (CSC) denying Gonzalez's motion for reconsideration and upholding his removal from the Jersey City firefighter eligibility list. He was removed from the list after his background report revealed: he was terminated as a police officer from the Jersey City Police Department (JCPD) in 2009 and from another job in 2017; arrests in 2009 and 2010; a disorderly persons conviction in 2010; and a history of motor vehicle violations and accidents in his driving record. In affirming, the Appellate Division held: (1) Gonzalez presented no new evidence to support his assertion that a hearing would have changed the outcome of the CSC's determination; (2) his removal from the JCPD for disciplinary reasons was sufficient reason alone for removal from the eligibility list; (3) his disciplinary adjudications and disorderly persons conviction all involved instances of dishonesty and deceit – traits not tolerated in a position of public service and of a firefighter; and (4) Gonzalez did not demonstrate that the CSC's final action was arbitrary, capricious, or unreasonable.

Appellate Division upholds revocation of teaching license after tenure arbitrator imposed disciplinary sanction short of removal

Morison v. Willingboro Bd. of Educ., 2024 N.J. Super. LEXIS 29 (App. Div. Dkt. No. A-1280-22)

The Appellate Division of the Superior Court, in a published opinion, affirms the Law Division's ruling that State regulators are not precluded by a tenure arbitrator's decision from seeking to revoke or suspend a public school teacher's teaching certificate, based upon the same conduct that gave rise to the tenure charges. In affirming, the Appellate Division held: (1) the state Board of Examiners properly pursued revocation of Morison's teaching license after he was sanctioned under the Tenure Employees Hearing Law with a suspension for engaging in unbecoming conduct; (2) preclusion principles did not apply as

the Board of Examiners was not a party to the arbitration; (3) the separate processes to revoke or suspend an educator's certificate, and to discipline a tenured educator, did not violate procedural due process as the teacher was provided with notice of the charges and an opportunity to be heard; and (4) the separate regulatory action of the Board of Examiners did not violate substantive due process as it was not egregious governmental abuse, and the industrial double jeopardy doctrine did not apply in New Jersey.

Appellate Division affirms removal of firefighter from list of eligibles for fire lieutenant based upon unsatisfactory employment history

In re Shaw, 2024 N.J. Super. Unpub. LEXIS 533 (App. Div. Dkt. No. A-1881-22)

The Appellate Division of the Superior Court, in an unpublished opinion, affirms a final agency decision of the Civil Service Commission (CSC) which affirmed the Township of Belleville's decision to remove Shaw's name from the list of eligible candidates for the position of fire lieutenant, based on an unsatisfactory employment history that included extensive discipline and multiple suspensions during Shaw's time as a firefighter with the Township. In affirming, the Appellate Division held: (1) the CSC did not act in an arbitrary, capricious, or unreasonable manner in denying Shaw's application; (2) Shaw's documented disciplinary record, coupled with his negative interactions with authority, provided ample support for the CSC's decision that Belleville appropriately removed Shaw from the eligible list; and (3) Shaw did not present a prima facie case, or disputed material facts, supporting that the decision makers involved in removing him from the list engaged in harassment or political retaliation.

Appellate Division affirms county was not required to explain why a record did not exist in its response to OPRA request

Williams v. Mercer Cnty. Bd. of Elections, 2024 N.J. Super. Unpub. LEXIS 568 (App. Div. Dkt. No. A-2726-22)

The Appellate Division of the Superior Court, in an unpublished opinion, affirms a Law Division order dismissing Williams' complaint against the Mercer County Board of Elections and Mercer County (collectively, County) with prejudice, denying her request for audio and video recordings, and denying her request for attorney fees pursuant to the Open Public Records Act (OPRA). After witnessing a Board employee announce they would record a Board meeting (at which the results of a runoff election were

being publicly reviewed) on a mobile device, Williams filed an OPRA request seeking copies of those recordings. The County replied simply that it had "no responsive records." Williams then filed suit, disputing the accuracy of the County's response based upon her first-hand knowledge. In the course of the litigation, the County produced a certification (known as a "Paff" certification) stating its employee's "cell phone [had] failed to record the meeting." Williams argued the County should have provided that information in its initial response. The trial court disagreed. In affirming, the Appellate Division held: (1) the County properly responded that they had no records to produce because the video recording was never created or maintained, and this was not a situation where a public record was generated and subsequently destroyed; (2) under these facts, the County was not required to provide Williams a Paff certification; and (3) Williams was not a prevailing party.

Appellate Division upholds removal of name from police officer eligible list based upon psychological disqualification

In re J.M., 2024 N.J. Super. Unpub. LEXIS 581 (App. Div. Dkt. No. A-0129-22)

The Appellate Division of the Superior Court, in an unpublished opinion, affirms a final administrative decision of the Civil Service Commission (CSC), upholding the City of Elizabeth's removal of J.M.'s name from a 2021 eligible list for police officer based on a psychological disqualification. In affirming, the Appellate Division held: (1) the CSC properly concluded that J.M. failed to establish good cause to extend the filing deadline for his rebuttal report; (2) the CSC appropriately weighed and considered the prejudice to the City and any officer hired by the City after J.M.'s removal from the list, if J.M. were to succeed in his appeal; and (3) J.M. failed to establish the CSC's decision was arbitrary, capricious, and unreasonable.