



**STATE OF NEW JERSEY
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DATE: April 16, 2025

TO: Commissioners

FROM: Counsel Staff

RE: Developments in Counsel's Office since March 27, 2025

Commission Cases

Appeals from Commission Decisions

The New Jersey Supreme Court issued an Order granting Rutgers, the State University of New Jersey's Petition for Certification from the December 13, 2024, judgment of the Superior Court, Appellate Division, In re Rutgers, 2024 N.J. Super. Unpub. LEXIS 3033. The Appellate Division affirmed the Commission's decision, P.E.R.C. No. 2024-2, 50 NJPER 127 (¶31 2023), which denied Rutgers' petition for a restraint of binding arbitration of grievances filed by AFSCME Local 888 alleging Rutgers terminated without just cause the employment of two unit members following Title IX proceedings conducted by Rutgers.

The Appellate Division issued an Order dismissing, as settled, the Paterson Fire Officers' Association's 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.

After Counsel's office filed opposition, the Appellate Division issued an Order denying the Union Township Board of Education's motion for leave to appeal from the Commission's decision, P.E.R.C. No. 2025-23, 51 NJPER 193 (¶49 2024). The Commission found the Board violated the Act when it unilaterally changed its payroll scheme without notice to affected members of the Union Township Education Association and referred the matter for a hearing to determine damages. The Board's motion followed the Appellate Division's initial dismissal of its appeal on the grounds that PERC's decision was not final.

Commission Court Decisions

No new Commission court decisions have been issued since March 27.

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

Third Circuit enforces NLRB order finding waste-hauling company committed unfair labor practice through coercive memo to employees prior to union election

Russell Reid Waste Hauling & Disposal Serv. Co. Inc. v. NLRB, 2025 U.S. App. LEXIS 6387 (3d Cir. Dkt. Nos. 24-1890 and 24-2014)

The Third Circuit Court of Appeals, in a non-precedential decision, denies the employer's petition for review, and grants the cross-petition of the National Labor Relations Board (NLRB) for enforcement of its order finding the Russell Reid Waste Hauling & Disposal Services Company committed an unfair labor practice when its vice president sent a memorandum to employees at its Keasbey, New Jersey facility announcing that merit wage increases would be delayed until after a then-upcoming union election, and explicitly told Keasbey employees that, to be "eligible" for the merit increase, they "must not be part of a collective bargaining unit (i.e., Union)." The Third Circuit found "a reasonable Keasbey employee would understand this to mean that he would not receive an increase if he voted for the union and the union won," and that this "had the tendency to coerce a reasonable Keasbey employee not to exercise his right to choose union representation." The Third Circuit otherwise found it lacked jurisdiction to review Russell Reid's challenge to the NLRB's remedy of setting aside the election results and directing

a new election, because an order directing a new election is not final until the election is complete.

Appellate Division upholds dismissal of corrections officer for videotaping offensive conduct at Black Lives Matter march

In re DeMarco, 2025 N.J. Super. Unpub. LEXIS 468 (App. Div. Dkt. No. A-0853-23)

The Appellate Division of the Superior Court, in an unpublished opinion, affirms a final agency decision of the Civil Service Commission (CSC) upholding DeMarco's disciplinary removal from his employment as a senior correctional police officer at Bayside State Prison, Department of Corrections (DOC). The disciplinary action was initiated after DeMarco was reported to have videotaped his brother and nephew reenacting George Floyd's murder, and other offensive conduct, at his brother's wood yard that was along the path of a Black Lives Matter march following the murder of George Floyd; and because DeMarco had secondary employment at the wood yard but had failed to report it as required. In affirming, the Appellate Division held: (1) DeMarco's conduct rose to the level of "conduct unbecoming" a corrections officer because it adversely affected DOC morale, tended to destroy public confidence and respect in the DOC, and was offensive to accepted standards of decency; (2) DeMarco's admissions that he "would do things differently" and should have "walked away" supported that the behaviors required at least his extraction from the offensive environment; (3) his failure to report his admitted work at the wood yard was sufficient to sustain the charge of other "sufficient cause"; and (4) in light DeMarco's egregious conduct, progressive discipline did not support a lesser penalty.

Appellate Division reinstates arbitration award that procedurally dismissed city union's grievance seeking double-time pay for work performed during COVID-19 state of emergency

Jersey City Pub. Emps., Inc., Local 245 v. City of Jersey City, 2025 N.J. Super. Unpub. LEXIS 494 (App. Div. Dkt. No. A-0481-23)

The Appellate Division of the Superior Court, in an unpublished opinion, reverses a Law Division order which vacated an arbitration award dismissing Local 245's grievance seeking contractual double-time wages from the City of Jersey City for work performed during the COVID-19 State of Emergency (SOE). The parties' CNA required that grievances be filed within ten days of the event being grieved. Local 245 did not do so until more than 19 months after the COVID-19 SOE went into effect. The arbitrator concluded the union had not timely filed its grievance and dismissed it without addressing the merits. The Law Division

vacated the arbitrator's award, finding the grievance asserted a continuing violation, but declined to compel the City to provide double pay as provided in the CNA. The Law Division reasoned, "the facts of this case are not one week [of emergency, as in an unreported App. Div. decision¹], it's three-and-a-half years and counting. And how could that have ever been in the contemplation of the parties when they entered into that agreement?" The Appellate Division upheld the Law Division's denial of double-time wage relief but reversed the portion of its order vacating the arbitrator's award and remanded for entry of an order confirming it. In doing so the Appellate Division held: (1) the earlier decision about a completely different SOE was inapposite to the facts of this case and did not obviate the requirement to comply with the grievance procedure; (2) Local 245's failure to timely do so warranted dismissal on procedural grounds; and (3) the trial court's vacatur of the arbitrator's award was error.

Appellate Division partially reinstates School Ethics Act complaints against school board members on charges that their anti-union social media posts, among others, compromised board

Donnerstag v. Koenig, 2025 N.J. Super. LEXIS 28 (App. Div. Dkt. No. A-0366-23);

Donnerstag v. Borawski, 2025 N.J. Super. LEXIS 27 (App. Div. Dkt. No. A-0367-23)

The Appellate Division of the Superior Court partially affirms and partially reverses and remands final agency decisions of the School Ethics Commission (SEC) dismissing separate complaints under the School Ethics Act (SEA) against Koenig and Borawski, members of the Central Regional Board of Education. The complaints, filed by fellow board members, sought disciplinary action against Koenig and Borawski on allegations targeting their respective "posts and reposts uploaded to [their] public social media account[s] while [each] was a Board member-elect and a Board member." Their various social media posts, among other things, advocated for board employees to rescind their labor

¹ As detailed in the June 2021 General Counsel's Report, in Jersey City Public Employees, Inc., Local 245, v. City of Jersey City, 2021 N.J. Super. Unpub. LEXIS 1018 (App. Div. Dkt. No. A-4558-19), the Appellate Division reversed an arbitrator's award which denied Local 245's grievance alleging the City failed to pay members double time for working through a weather-related SOE in 2018. The court found the relevant contractual language was unambiguous and granted Local 245's members double pay.

union memberships (Koenig) and for labor union members to leave their current unions and form new ones opposed to vaccine mandates and COVID-19 testing (Borawski). Their posts were also critical of the Governor and the State's gender identity curriculum. The SEC initially dismissed some of the counts summarily on jurisdictional grounds and remanded the rest to administrative law judges (ALJs) for hearings. The SEC then dismissed each complaint, declining to adopt the ALJs' summary decisions which found violations of the SEA and recommended censure as the appropriate penalty. Notably, the Appellate Division reversed the SEC's summary dismissal of allegations that defendants' social media posts on labor union membership violated the SEA, finding: their "opposition to the collective bargaining group with whom the Board was legally obligated to negotiate the terms and conditions of teachers, employment in the school district . . . compromised the Board . . . [as] evidenced by the protests at the Board meeting and the unions filing an unfair labor practice charge against the Board due to" their anti-union assertions. The Appellate Division remanded to the SEC to determine the appropriate penalty.

Appellate Division upholds arbitrator's dismissal of police union's overtime pay grievance

State Troopers Fraternal Ass'n v. State of New Jersey, Div. of State Police, 2025 N.J. Super. Unpub. LEXIS 528 (App. Div. Dkt. No. A-2145-23)

The Appellate Division of the Superior Court, in an unpublished opinion, affirms a trial court order denying a motion by the State Troopers Fraternal Association (STFA) to vacate an arbitration award dismissing its grievance against the State of New Jersey, Division of State Police (State). The grievance, filed in 2019, alleged the State improperly calculated the hourly overtime rate by utilizing the actual number of working days in each fiscal year, rather than using 2,080 annual hours as the divisor per the CNA. The arbitrator concluded that the parties had consistently interpreted the CNA's figure as "illustrative and descriptive, not prescriptive," based upon evidence showing they had used other appropriate divisors for over thirty years prior to 2019. The trial court found the arbitrator's conclusion was "reasonably debatable" and thus did not meet the standard for setting aside the arbitration award. In affirming, the Appellate Division held: (1) since it is susceptible to more than one reasonable interpretation, the CNA is ambiguous; (2) thus the arbitrator's consideration of extrinsic past-practice evidence was permissible; and (3) there was no error in the trial court's denial of STFA's motion to vacate the arbitration award.