STEPHEN HARS Appellant, v. TOWNSHIP OF CLINTON Respondent,	:	SUPERIOR COURT OF NEW JERSEY APPELLATE DIVISION Docket No.: A-003962-23 CIVIL ACTION Nature of Action: On Appeal of a Final Decision of the New Jersey Public Employment Relations Commission, denying Appellant Appointment from the Special Disciplinary Arbitration Panel; and Final Decision of the New Jersey Public Employment Relations Commission on Motion for Reconsideration, entered on August 5, 2024.

APPELLANT STEPHEN HARS' AMENDED BRIEF

ON THE BRIEF
PAUL W. TYSHCHENKO, ESQ.
#01078-2007

CARUSO SMITH PICINI
60 ROUTE 46 EAST
FAIRFIELD, NEW JERSEY 07004
(973) 667-6000
ATTORNEYS FOR APPELLANT STEPHEN HARS
ptyshchenko@carusosmith.com

TABLE OF CONTENTS

TABLE OF APPENDIX

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[1] Per New Jersey Court Rule 2:6-1(a)(2), Stephen Hars' motion for reconsideration (Pa011) is included in this Appendix, as it is referred to in the decision, dated August 5, 2024. N.J. Ct. R. 2:6-1(a)(2) and this issue is germane to this appeal.

[2] Per New Jersey Court Rule 2:6-1(a)(2), Stephen Hars' motion for reconsideration (Pa011) is included in this Appendix, as it is referred to in the decision, dated August 5, 2024. N.J. Ct. R. 2:6-1(a)(2) and this issue is germane to this appeal.

TABLE OF APPENDIX

TABLE OF JUDGMENTS, ORDERS AND RULINGS BEING APPEALED

TABLE OF AUTHORITIES

A. CASES

B. STATUTES

Procedural History

Stephen Hars (hereinafter, also referred to as "Appellant") appeals the decision of the New Jersey Public Employment Relations Commission (hereinafter, also referred to as "PERC") denying his Request for Appointment from the Special Disciplinary Arbitration Panel as well as the denial of his subsequent Motion for Reconsideration. (Pa001-002, Pa003-004).

After a departmental hearing on May 8, 2024, the Township of Clinton (hereinafter, also referred to as the "Township") terminated Appellant. (Pa005).[1] On, or about, June 3, 2024, Appellant filed a Request for Appointment from the Special Disciplinary Arbitration Panel with PERC. (Pa006-007). On, or about, June 3, 2024, the Township filed a Motion to Dismiss Appellant's Petition. (Pa008-010).[2] After considering the Township's Motion and Appellant's opposition on, or about, July 2, 2024, PERC granted the Township's Motion to Dismiss Appellant's Petition finding that, because the disciplinary charges against Appellant were related to conduct that would constitute a violation of the criminal laws of New Jersey, Appellant was not

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[1] The transcript of the December 15, 2023 Township of Clinton Police Department disciplinary hearing before C. William Bowkley, Jr., Hearing Officer, is 1T; the transcript of the December 20, 2023 Township of Clinton Police Department disciplinary hearing is 2T; and, the transcript of the December 27, 2023 Township of Clinton Police Department disciplinary hearing is 3T.

[2] Per New Jersey Court Rule 2:6-1(a)(2), the inclusion of briefs in an appendix is prohibited, unless the brief is referred to in the decision of the agency. In the instant appeal, Respondent's brief was referred to in the Public Employment Relations Commission's decision, dated July 2, 2024, and this issue is germane to this appeal. (Pa001-002).

eligible for Special Disciplinary Arbitration, pursuant to N.J.S.A. 40A:14-210(a). (Pa001-002).

On, or about, July 17, 2024, Appellant filed a timely Motion for Reconsideration with PERC. (Pa011-013).[3] After considering Appellant's Motion and the Township's Opposition to it, PERC denied Appellant's Motion for Reconsideration on, or about, August 5, 2024 because, in its opinion, (1) PERC's rules do not provide for reconsideration of decisions in special disciplinary arbitration (SDA) matters; and, (2) Appellant had provided new evidence in his Motion for Reconsideration without explanation. (Pa003-004).

Statement of Facts

On, or about, July 2, 2024, PERC granted the Township's Motion to Dismiss Appellant's Request for Appointment from the Special Disciplinary Arbitration Panel finding that, because the disciplinary charges against Appellant were related to conduct that would purportedly constitute a violation of the criminal laws of New Jersey, Appellant was not eligible for Special Disciplinary Arbitration, pursuant to N.J.S.A. 40A:14-210(a). (Pa001-002).

[3] Per New Jersey Court Rule 2:6-1(a)(2), the inclusion of briefs in an appendix is prohibited, unless the brief is referred to in the decision of the agency. In the instant appeal, Appellant's brief was referred to in the Public Employment Relations Commission's decision, dated August 5, 2024 and this issue is germane to this appeal. (Pa003-004).

The Final Notice of Disciplinary Action alleged that Appellant made false statements in official police department records. (Pa005). PERC accepted the Township's argument that this charge was the equivalent of a criminal offense in violation of N.J.S.A. 2C:28-7(a). (Pa001). Specifically, the Township alleged that Appellant had lied in official police reports about the number of rounds he discharged from his weapon on two (2) separate calls in September of 2022. (Pa009). In his Motion for Reconsideration, Appellant argued that he was never interviewed, arrested, indicted, charged, or convicted of any crime. (Pa011-013).

In issuing its decision granting the Township's Motion to Dismiss (and determining that Appellant is ineligible for special disciplinary arbitration), PERC opined that N.J.S.A. 40A:14-210(a) does not require a formal criminal investigation, the filing of formal criminal charges, or citation to the criminal statutes in the disciplinary investigation or disciplinary charges. (Pa001-002). See, Isaacson v. PERC, A-2991-14T4, 2017 N.J. Super. Unpub. LEXIS 466 (App. Div. 2017). (Pa015) PERC also opined that Appellant had not provided a certification from a law enforcement official or expert to refute the Hearing Officer's finding that his alleged conduct was equivalent to a violation of the criminal laws. (Pa001-002).

In Appellant's Motion for Reconsideration, Appellant submitted the Internal Affairs Review Form of the Hunterdon County Prosecutor's Office, dated October 3, 2022. (Pa014). Said form indicated that the Hunterdon County Prosecutor's Office had reviewed the case against Appellant "for the possibility of criminal prosecution" and determined that "Under the circumstances, criminal prosecution is not warranted. This investigation may continue at an administrative level within your department for whatever action you deem necessary." (Pa014).

Additonally, among other things, Appellant also respectfully requested that PERC reconsider the sworn testimony of the Township's Chief of Police, Thomas DeRosa, at the December 20, 2023 departmental hearing of the charges and specifications against Appellant. (Pa011-013). On said date, Chief DeRosa was asked, under oath, by Appellant's attorney: "When the Prosecutor's Office referred it back to you, did they indicate that it was insufficient to pursue criminal charges?" (2T, 105;4-6). Chief DeRosa's response was "… When they send it back, basically it's not enough to charge criminally…" (2T, 105:8-9). Thus, not only did the Hunterdon County Prosecutor's Office determine in October 2022 that there was no criminal element to the Township's case against Appellant, despite what the Township argued in its Motion to Dismiss, the Township knew that there was no criminal

element to the case against Appellant and admitted as much at its December 20, 2023 departmental hearing, despite its Hearing Officer's statements to the contrary.

After considering Appellant's Motion and the Township's response to it, PERC denied Appellant's Motion on, or about, August 5, 2024, because (1) PERC's rules do not provide for reconsideration of decisions in special disciplinary arbitration (SDA) matters; and, (2) Appellant had provided new evidence in his Motion for Reconsideration without explanation. (Pa003-004).

On appeal, Appellant presents the following arguments: (1) PERC's finding that the disciplinary charges against Appellant were related to conduct that would constitute a violation of the criminal laws of New Jersey was arbitrary, capricious, or unreasonable; or, not supported by substantial evidence; (2) PERC has the inherent power to consider Appellant's motion for reconsideration and ought to have exercised that power to do so. PERC's denial of Appellant's Motion for Reconsideration on the ground that PERC's "rules do not provide for reconsideration of decisions in special disciplinary arbitration matters" was arbitrary, capricious, or unreasonable. In other words, PERC's reasons for denying Appellant's Petition and Motion for Reconsideration were unlawful, arbitrary and capricious. These issues are addressed below.

Legal Argument

Point I

PERC's finding that the disciplinary charges against Appellant were related to conduct that would constitute a violation of the criminal laws of New Jersey was arbitrary, capricious, or unreasonable; or, not supported by substantial evidence. (Pa001-002, Pa003-004)

The role of appellate review of an administrative agency includes a survey of the record to determine whether there is sufficient competent, credible evidence to support the agency decision, as a whole. See Clowes v. Terminex Inter. Inc. 109 N.J. 575, 587 (1988) and Jamison v. Rockaway Township Board of Education, 242 N.J. Super. 436, 448 (App. Div. 1990). Courts will reverse the decision of an administrative agency where that decision is arbitrary, capricious, or unreasonable or not supported by substantial credible evidence. Henry v. Rahway State Prison, 81 N.J. 571, 579-80 (1980); St. Vincent's Hospital v. Finley, 154 N.J. Super. 24, 29-30 (App. Div. 1977).

In re Application of Howard Savings Inst. Of Newark, 32 N.J. 29, 52 (1960) the Supreme Court held:

> It is axiomatic in this State by this time that an administrative agency acting quasi-judicially must set forth basic findings of fact, supported by the evidence and supporting the ultimate conclusion and final determination, for the salutary purpose of informing the interested parties and any reviewing tribunal of the basis on which the final decision was reached so that it may be readily determined

> whether the result is sufficiently and soundly grounded or derives from arbitrary, capricious or extra-legal considerations.

Thus, this Court is empowered to "... decide whether the [administrative] findings could reasonably have been reached on the credible evidence in the record, considering the proofs as a whole." Burris v. Police Department, 338 N.J. Super. 493, 496 (App. Div. 2001).

In determining if an agency's decision is arbitrary, capricious or unreasonable, the following is to be considered:

> (1)whether the agency's action violates express or implied legislative policies, that is, did the agency follow the law;
>
> (2) whether the record contains substantial evidence to support the findings on which the agency based its action; and
>
> (3) whether in applying the legislative policies to the facts, the agency clearly erred in reaching a conclusion that could not reasonably have been made on a showing of relevant factors.

In re Carter, 191 N.J. 474 (2007).

PERC erred in denying Appellant's Request for Appointment from the Special Disciplinary Arbitration Panel and his Motion for Reconsideration. In addition to the fact that Appellant was never interviewed, arrested, indicted, charged, or convicted of any crime, the sworn testimony of the Township's Chief of Police, Thomas DeRosa, clearly reflects that the charges against

Appellant were not, in fact, related to conduct that would constitute a violation of the criminal laws of New Jersey. When asked, under oath, whether the Prosecutor's Office indicated whether the Township's charges against Appellant were sufficient to pursue criminal charges, Chief DeRosa testified that when the Prosecutor's Office "send[s] it back, basically it's not enough to charge criminally…" (2T, 105:8-9). Not only did the Hunterdon County Prosecutor's Office determine in October 2022 that there was no criminal element to the Township's case against Appellant, the Township knew that there was no criminal element to the case against Appellant and admitted as much on the record at the December 2023 departmental hearing. (Pa019) (2T, 105:8-9).

For the foregoing reasons, it is respectfully submitted that this Court should find that PERC's decision to deny Appellant's Request for Appointment from the Special Disciplinary Arbitration Panel and his Motion for Reconsideration was arbitrary, capricious, unreasonable or not supported by substantial credible evidence as a whole. And, as such, PERC's decision should be reversed.

Point II

PERC had the inherent power to consider Appellant's reconsideration motion and ought to have exercised that power to do so. (Pa003-004)

It is respectfully submitted that PERC erred in refusing Appellant's reconsideration motion. It had the power to do so and, under the circumstances, it ought to have exercised that power.

It is well-settled that an administrative agency has the inherent power, absent statutory restriction, to reopen or modify previously entered orders for good cause. In re Van Orden, 383 N.J. Super. 410, 419 (App. Div. 2006); In re Adamar of N.J., 222 N.J. Super. 464, 474 (App. Div. 1988); see also Lee v. W.S. Steel Warehousing, 205 N.J. Super. 153, 157-58 (1985). Of course, the agency must only exercise that power reasonably "and only where the applicant acted with reasonable diligence." Adamar, supra, 222 N.J. Super. at 474 (citing Duvin v. State, Dep't. of Treasury, Pub. Empls. Ret. Sys., 76 N.J. 203, 207 (1978)); see also Steinman v. State, Dep't of Treasury, Div. of Pensions, Teachers' Pension & Annuity Fund, 116 N.J. 564, 573 (1989) (noting that an agency should reopen a prior decision upon a showing of good cause, reasonable grounds, and reasonable diligence).

Here, given the underlying strength of Appellant's request for reconsideration and the stakes at play based on PERC's decision, PERC ought to have entertained the motion. Moreover, Appellant acted with reasonable diligence in filing his motion for reconsideration.

Accordingly, this Court should, at least, remand this matter to PERC with a directive that it accept and substantively rule on Appellant's request for reconsideration.

Conclusion

For the foregoing reasons, Appellant respectfully requests that this Court reverse PERC's decision denying Appellant's Request for Appointment from the Special Disciplinary Arbitration Panel and his Motion for Reconsideration. Instead, Appellant respectfully requests that this Court grant his Request for said Appointment.

Alternatively, it is respectfully submitted that this Court should remand this matter to PERC with a directive that it accept and substantively rule on Appellant's request for reconsideration.

Respectfully,
CARUSO SMITH PICINI PC

By: **/s/ Paul W. Tyshchenko**
Paul W. Tyshchenko

Dated: June 23, 2025

STATE OF NEW JERSEY
PUBLIC EMPLOYMENT RELATIONS COMMISSION

PO Box 429
TRENTON, NEW JERSEY 08625-0429

www.nj.gov/perc

ADMINISTRATION/LEGAL
(609) 292-9830
CONCILIATION/ARBITRATION
(609 292-9898
UNFAIR PRACTICE/REPRESENTATION
(609) 292-6780

For Courier Delivery
495 WEST STATE STREET
TRENTON, NEW JERSEY 08618

FAX: (609) 777-0089
EMAIL: mail@perc.nj.gov

July 25, 2025

VIA E-MAIL
Marie C. Hanley, Clerk
Superior Court of New Jersey
Appellate Division
Richard J. Hughes Justice Complex
PO Box 006
Trenton, NJ 08625

Filing Attorney: Ramiro A. Perez, Deputy General Counsel
Attorney I.D. #029952010, Email: rperez@perc.nj.gov

Re: In the Matter of Stephen Hars, Appellant -and - Township of Clinton, Respondent;
App. Div. Dkt. No. A-003962-23
Agcy. Dkt. No. DA-2024-007

Dear Ms. Hanley:

The Public Employment Relations Commission (PERC or Commission) files this letter brief in opposition to Stephen Hars' (Hars or Appellant) appeal

from a decision by the Commission's Director of Arbitration (Director), declining to process Hars' request to appoint a special disciplinary arbitrator, pursuant to N.J.S.A. 40A:14-210, to review the disciplinary termination of his employment as a police officer for the Township of Clinton Police Department (Township or Respondent); and from the Director's denial of Hars' request for reconsideration.

TABLE OF CONTENTS

PROCEDURAL HISTORY AND COUNTERSTATEMENT OF FACTS[1/]

On May 8, 2024, following a departmental hearing, the Township accepted a Hearing Officer's Report and Recommendation terminating Hars. Hars was notified of the termination on May 14. (Pa009). Hars could not arbitrate over

1/ The procedural history and statement of facts are combined because the facts material to the issues on appeal are largely procedural in nature.

major discipline (see N.J.S.A. 34:13A-5.3), but could utilize his alternate statutory appeal as a non-Civil Service police officer to challenge the imposition of major discipline pursuant to N.J.S.A. 40A:14-147 through -151 (internal hearing process followed by Superior Court review) or N.J.S.A. 40A:14-209 through -210 (special disciplinary arbitration or SDA).[2/] On June 3, Hars filed a Request for Appointment from the SDA Panel with the Commission. (Pa008). That same day, the Township filed a motion to dismiss Hars' request for SDA. On July 2, the Director issued a final agency decision, as required by N.J.S.A. 40A:14-209(a), finding that the disciplinary charges against Hars are related to conduct that would constitute a violation of the criminal laws of New Jersey, and therefore, the Director declined Hars' request for SDA. (Pa001-002[3/]) The Director based her determination on the facts certified by the Township's counsel with attached

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2/ Specifically, N.J.S.A. 40A:14-150 provides, in pertinent part: "Any member or officer of a police department or force in a municipality wherein Title 11A of the New Jersey Statutes is not in operation [Civil Service], who has been tried and convicted upon any charge or charges, may obtain a review thereof by the Superior Court; provided, however, that in the case of an officer who is appealing removal from his office, employment or position for a complaint or charges, other than a complaint or charges relating to a criminal offense, the officer may, in lieu of serving a written notice seeking a review of that removal by the court, submit his appeal to arbitration pursuant to section 10 of P.L.2009, c.16 (C.40A:14-209)"

3/ All citations to documents herein refer to Hars' amended appendix, filed June 23, 2025.

exhibits, including the Preliminary Notice of Disciplinary Action[4/] and the Report and Recommendations of the Hearing Officer for Hars' termination. (Pa019-032).

In September 2022, Hars responded to two separate animal calls where he proceeded to discharge his firearm 12 to 13 times to dispatch "rabid" animals, and subsequently, reported on the official "weapon discharge form" that he only discharged 4 to 6 rounds, respectively. (Pa022-025). Hars was terminated, in part, based on the Hearing Officer's finding that he made false statements in official police department records that is the equivalent of a criminal offense in violation of N.J.S.A. 2C:28-7(a). (Pa022-028).[5/] Specifically, the Hearing officer found that Hars lied in official police reports about the number of rounds he discharged from his weapon on the two separate animal calls in September 2022. (Pa028). Hars responded, inter alia, that he was never arrested, indicted, charged, or convicted of any crime. Citing Isaacson v. PERC, A-2991-14T4, 2017 N.J. Super. Unpub. LEXIS 466 (App. Div. 2017), the Director found that "N.J.S.A.

4/ This notice stated, "The specifications allege conduct equivalent to the following high misdemeanors and criminal offenses involving dishonesty: False swearing, N.J.S.A. 2C:28-2(a); Unsworn Falsification to authorities, N.J.S.A. 2C:28-3(b); N.J.S.A. 2C:28-7(a); Official Misconduct, N.J.S.A. 2C:30-2; and Pattern of Official Misconduct, N.J.S.A. 2C:30-7(a)."

5/ The Hearing Officer specifically stated, "N.J.S.A. 2C:28-7(a), however, appears to most closely track the factual pattern."

40A:14-210 does not require a formal criminal investigation, the filing of formal criminal charges, or citation to the criminal statutes in the disciplinary investigation or disciplinary charges." (Pa003).

On July 17, Hars filed a Motion for Reconsideration. (Pa056-057). On July 23, the Township filed its opposition. On August 5, the Director declined to reconsider the final agency decision, continuing to find Hars ineligible for SDA.

Hars filed a notice of appeal on August 16. The Commission filed a statement of items (SOI) comprising the record on October 15. Hars filed an amended brief and appendix on April 22, 2025.[6/] The Commission now files the instant letter brief in support of affirmance of the Director's final agency decision.

LEGAL ARGUMENT

I. Standard of Review: Was the Commission's Decision Arbitrary or Capricious?

The Commission and its designees have "broad authority and wide discretion in a highly specialized area of public life" and are entrusted with deciding cases based upon their "expertise and knowledge of circumstances and dynamics that are typical or unique to the realm of employer-employee relations in

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6/ On March 5, the Appellant initially filed its brief and appendix. On March 13, the Court issued a "brief deficiency letter" directing the Appellant to cure several deficiencies in order for the appeal to proceed.

the public sector." Hunterdon Cty. Freeholder Bd. and CWA, 116 N.J. 322, 328 (1989). Judicial review in this context is narrow:

> The role of judicial review [concerning the reasonableness of a quasi-Legislative policy decision pursuant to duly-delegated authority] is thoroughly settled. The administrative determination will stand unless it is clearly demonstrated to be arbitrary or capricious. . . . Moreover, where, as here, a substantial element of agency expertise is implicated, due weight should be accorded thereto on judicial review. State v. Professional Ass'n of N.J. Dep't of Education, 64 N.J. 231, 258-59 (1974).
>
> [Hunterdon Cty., 116 N.J. at 329 (emphasis added to Court's bracketed text).]

The Director's decisions were not arbitrary, capricious, or unreasonable, and should be affirmed.

II. The legal standards controlling SDA.

N.J.S.A. 40A:14-209(a) provides, in pertinent part:

> When a law enforcement officer . . . employed by a law enforcement agency or department that is not subject to the provisions of Title 11A of the New Jersey Statutes is suspended from performing his official duties without pay for a complaint or charges, other than (1) a complaint or charges relating to the subject matter of a pending criminal investigation, inquiry, complaint, or charge whether pre-indictment or post indictment, or (2) when the complaint or charges allege conduct that also would constitute a violation of the criminal laws of this State or any other jurisdiction, and the law enforcement

> agency or department employing the officer . . . seeks to terminate that officer's . . . employment for the conduct that was the basis for the . . . suspension without pay, the officer, as an alternative to the judicial review authorized under N.J.S.40A:14-150, . . . may submit an appeal of his suspension and termination to the Public Employment Relations Commission for arbitration conducted in accordance with the provisions of section 11 of P.L.2009, c.16 (C.40A:14-210).
>
> [N.J.S.A. 40A:14-209(a)(emphasis added).]

Accordingly, eligibility for SDA requires: 1) a non-Civil Service jurisdiction law enforcement police officer or firefighter; 2) who has been terminated for non-criminal conduct; and 3) a timely application for special disciplinary arbitration within 20 days of the employee's receipt of a notice of termination. N.J.S.A. 40A:14-209, -210 (emphasis added). If the officer or firefighter is deemed eligible for SDA, the Director appoints an arbitrator. N.J.A.C. 19:12-6.5.

Pursuant to N.J.S.A. 40A:14-211(b), the Commission promulgated regulations, N.J.A.C. 19:12-6.1 through -6.8, implementing the statutory provisions for SDA set forth at N.J.S.A. 40A:14-209 through -210. These regulations require the Director to process a law enforcement officer's or firefighter's timely appeal of their termination to SDA. See N.J.A.C. 19:12-6.1 et seq. The Director's role is limited to reviewing the parties' submissions to

determine eligibility for SDA, including whether the disciplinary charges against the officer relate to a criminal offense. Rutgers, The State University of New Jersey and Paul Fischer, P.E.R.C. No. 2021-13, 47 NJPER 215 (¶48 2020); see also Twp. of Hardyston v. Isaacson, Nos. A-3435-12T3, A-4180-12T3, 2014 N.J. Super. Unpub. LEXIS 1663, at 12 (App. Div. July 9, 2014).

In Twp. of Hardyston v. Isaacson, supra, the Court reversed the Commission's appointment of an arbitrator pursuant to SDA statues and remanded to the Commission for further proceedings to determine eligibility for SDA. In Isaacson v. Pub. Emp't Rels. Comm'n, supra, the Court affirmed the Commission's decision resulting from the remand in Hardyston, which denied the officer SDA because it related to a criminal offense. Issacson involved the termination of an officer for falsely reporting his location to the dispatcher during a vehicle stop in a neighboring jurisdiction, which constituted potential criminal violations. The Court found that the officer was not entitled to SDA because:

> PERC correctly found based on ample credible evidence in the record, the charges related to a criminal offense, and the alleged conduct also would constitute a violation of the criminal laws...none of [the SDA] statutes requires a formal criminal investigation, the filing of formal criminal charges, a criminal conviction, or citation to the criminal statutes in the disciplinary investigation or disciplinary charges. Notice to the officer specifying the factual basis for the alleged criminal conduct is

sufficient.

[Issacson at 14-15.]

In affirming PERC's decision that the officer's underlying conduct related to a criminal offense, the Court stated, "[the officer] knowingly filed a police arrest report and the two summonses, in which he falsely represented that the stop occurred in Hardyston. It is clear, therefore, that the charge of falsifying documents concerning the motor vehicle stop and arrest in Franklin relates to or also would constitute a violation of N.J.S.A. 2C:28-2(a), -3(a), and -7." Issacson at 17-18.

III. The Director correctly declined to appoint an arbitrator because the disciplinary charges related to criminal offenses.

Here, the Director determined that Hars was ineligible for special disciplinary arbitration because the disciplinary charges at issue related to criminal offenses. (Pa002). In making the eligibility determination, the Director noted that "N.J.S.A. 40A:14-210(a)[7/] does not require a formal criminal investigation, the

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7/ N.J.S.A. 40A:14-210(a) provides: "In lieu of serving a written notice to the Superior Court under the provisions of N.J.S.40A:14-150 or N.J.S.40A:14-22, as appropriate, seeking review of the termination of his employment for a complaint or charges, other than a complaint or charges relating to a criminal offense, as prescribed in subsection a. of section 10 of P.L.2009, c.16 (C.40A:14-209), an officer or firefighter may submit his appeal to arbitration as hereinafter provided. (Emphasis added.)

filing of formal criminal charges, or citation to the criminal statutes in the disciplinary investigation or disciplinary charges." Isaacson at 17, supra. The Director properly applied the above-cited legal standards to determine that the underlying charges for Hars' termination related to a criminal offense, namely N.J.S.A. 2C:28-7(a)[8/], and thus, Hars was ineligible for SDA. Moreover, in Hars' reply to the Township's motion to dismiss the SDA petition, he did not provide a certification or any evidence refuting the Hearing Officer's finding that his alleged conduct is equivalent to a violation of the criminal laws. In his June 20,2024 letter brief in opposition to the Township's motion to dismiss, Hars argues that "allegation of criminal conduct must be made in good faith" and proceeds to claim that the Hearing Officer's findings were biased. (Pa052). Further, Hars argues that he was not investigated, tried, or convicted of a crime, which as stated above, is not dispositive for SDA eligibility based on criminal conduct. (Ibid.)

8/ N.J.S.A. 2C:28-7(a) provides: "Offense defined. A person commits an offense if he: (1) Knowingly makes a false entry in, or false alteration of, any record, document or thing belonging to, or received or kept by, the government for information or record, or required by law to be kept by others for information of the government; (2) Makes, presents, offers for filing, or uses any record, document or thing knowing it to be false, and with purpose that it be taken as a genuine part of information or records referred to in paragraph (1); or (3) Purposely and unlawfully destroys, conceals, removes, mutilates, or otherwise impairs the verity or availability of any such record, document or thing."

In Hars' motion for reconsideration, and reiterated in this appeal, Hars proffers evidence that the Hunterdon County Prosecutor's Office determined that "under the circumstances, criminal prosecution is not warranted. This investigation may continue at an administrative level with your department for whatever action you deem necessary." (Pa060). Hars further argues, that the Township's Chief of Police admitted that there is no criminal element to the case and that Hars would be returned to work if the Hunterdon County Prosecutor's Office did not proceed with criminal charges. In Point II of Hars' appellate brief, he argues that the Director's denial of his motion for reconsideration was in error because the Commission had the authority to review its own decision and should have done so given the statements from the County Prosecutor's office and Township's Chief of Police.

While the Director's denial of Hars' motion for reconsideration noted that the Commission's rules do not provide for reconsideration of SDA decisions, it also denied the motion for reconsideration on substantive grounds. The Director denied Hars' motion for reconsideration because the "Commission rules do not provide for reconsideration of decisions in [SDA] matters," and "[Hars] has provided new evidence without explanation [not provided in his initial request for SDA or response to the Township's motion to dismiss]." The Director noted that

Hars' proffered new evidence that the Hunterdon County Prosecutor did not file criminal charges for Hars' misconduct is similar to the prosecutor in Isaacson, supra, who likewise declined to file formal criminal charges and referred the matter to the police department for administrative proceedings.

In both the Director's denial of Hars' SDA application and his motion for reconsideration, the Director correctly applied Isaacson, supra, to determine the underlying charges supporting Hars' termination related to a criminal offense, notwithstanding Hunterdon County Prosecutor's Office not pursuing criminal charges. In construing the phrases "relating to the subject matter of a pending criminal investigation, inquiry, complaint, or charge" in N.J.S.A. 40A:14-209, and "relating to a criminal offense" in N.J.S.A. 40A:14-210, the court in Isaacson relied on the dictionary definition of the word "relating" which, the court noted, "is defined as 'to show or establish logical or causal connection between.'" Isaacson, supra at 12, quoting Merriam-Webster Dictionary (2017). Here, the Director relied on the hearing officer's finding that Hars made false statements in official police department records that is the equivalent of a criminal offense in violation of N.J.S.A. 2C:28-7(a). The Hearing Officer found that Hars was "untruthful" in his filing of the "weapons discharge form", knowingly misrepresenting the number of rounds he discharged from his firearm in the two

animal shootings, and that the facts of these incidents "closely tracks" the criminal offense set forth in N.J.S.A. 2C:28-7(a). Hars' only refutation of the Hearing Officer's finding is that he was not criminally charged for this alleged crime, which is an argument that is not relevant or dispositive in determining SDA eligibility under Isaacson. Thus, the Director reasonably declined to appoint an arbitrator in light of the fact that Hars provided no evidence in a certification to refute the hearing officer's finding that Hars' conduct was related to the criminal offense under N.J.S.A. 2C:28-7(a).

CONCLUSION

The Commission's application, through the Director, of its administrative expertise to the issues and facts presented is entitled to deference and was not arbitrary, capricious, or unreasonable. Accordingly, the Director's decision to deny Hars' SDA application should be affirmed.

Respectfully submitted,

s/Ramiro A. Perez

Ramiro A. Perez, Esq.
Deputy General Counsel

DATED: July 25, 2025

STEPHEN HARS, Petitioner-Appellant, v. **TOWNSHIP OF CLINTON,** Respondent-Respondent.	**SUPERIOR COURT OF NEW JERSEY, APPELLATE DIVISION DOCKET NO. A-003962-23T2** CIVIL ACTION **ON APPEAL FROM A FINAL DETERMINATION OF THE PUBLIC EMPLOYMENT RELATIONS COMMISSION, DOCKET NO. DA-2024-007** **SAT BELOW: PUBLIC EMPLOYMENT RELATIONS COMMISSION**

BRIEF (AMENDED) OF RESPONDENT, TOWNSHIP OF CLINTON

THE CHILLA BUSINESS COUNSEL, LLC
268 South Street
Morristown, NJ 07960
Tel. (973) 660-1095
Fax (973) 349-1307
Attorneys for Respondent, Township of Clinton.

STEPHEN E. TRIMBOLI, ESQ. (026941983)
strimboli@chillalegal.com
Of Counsel and On the Brief

FARVA SCOTT, ESQ. (333032020)
farvastra@gmail.com
On the Brief

TABLE OF CONTENTS

TABLE OF AUTHORITIES

CASES

STATUTES

REGULATIONS

RULES

OTHER AUTHORITIES

TABLE OF JUDGEMENTS, ORDER AND RULINGS

PROCEDURAL HISTORY

Following a departmental hearing, the Township of Clinton, ("Respondent" or the "Township"), terminated Stephen Hars, (the "Appellant" or "Hars"), on May 8, 2024. (Ra75). Appellant filed a Request for Appointment from the Special Disciplinary Arbitration Panel, ("Request"), with the New Jersey Public Employment Relations Commission ("PERC" or the "Commission") on or about June 3, 2024. (Pa1). The Township filed a motion to dismiss Hars' Request on the same day. (Id.) PERC granted the Township's Motion on July 2, 2024, and dismissed the Request. (Pa1-Pa2).

Appellant filed a Motion for Reconsideration on July 17, 2024, to which Respondent filed timely opposition. (Pa3). PERC denied the Motion for Reconsideration on August 5, 2024, noting specifically that its procedural rules do not allow for reconsideration in cases such as this. (Pa3-Pa4).

On August 16, 2024, exactly 45 days from PERC's final decision dismissing his appeal,[1] Appellant filed a Notice of Appeal, (Ra11), improperly naming PERC as the adverse party, failing to list Respondent as a party, and

[1] R. 2:4-3(b) allows for the tolling of the time for appeal when a party applies to a state agency for reconsideration "pursuant to [the agency's] rules and practice." But because PERC's rules and practice do not allow for reconsideration in cases such as the instant matter, no tolling of the time for appeal was available to Appellant.

listing Respondent's attorney as the attorney for PERC. (Ra12, Ra14). After the latter error was called to Appellant's attention, (Ra15), Appellant filed an Amended Notice of Appeal on August 27, 2024, still improperly naming PERC as the adverse party and failing to list Respondent as a party. (Ra16-Ra18). This led to the Court issuing a deficiency notice to Appellant on August 28, 2024. (Ra5-Ra9, 8/26/2024 entry).

Appellant made his third attempt to perfect the appeal on September 7, 2024, (Ra19), but it was found deficient on September 9, 2024, because Appellant failed to name PERC's attorney. (Ra8, 9/9/2024 entry). It was not until his fourth attempt, on September 12, 2024—nearly a month after the 45-day appeal deadline had passed—that Appellant successfully perfected the appeal by filing and serving an Amended Notice of Appeal that met requirements. (Ra23). Despite this, Appellant went on to file three more amendments to his Notice of Appeal on October 21, 2024, November 5, 2024, and April 22, 2025, respectively. (Ra7, 10/21/2024 and 11/15/2024 entries; Ra5, 4/22/2025 entry).

The Court issued a briefing schedule requiring Appellant to submit his brief by January 3, 2025. (Ra27). Appellant requested and was granted an extension to February 3, 2025, (Ra6, 12/31/2024 entry), and later obtained a second extension, moving the deadline to March 5, 2025. (Ra6, 2/4/2025 entry).

Appellant filed an appeal brief on March 5, 2025, but the Court issued a deficiency notice on March 13, 2025, identifying ten deficiencies. (Ra6, 3/5/2025 entry; Ra29-R32). Appellant submitted a revised brief on March 28, 2025, which resulted in a second deficiency notice on April 7, 2025, identifying nine deficiencies. (Ra6, 3/28/2025; Ra33-Ra35). Appellant made a third attempt on April 22, 2025, but that version was also deemed deficient in a May 7, 2025 notice, which cited five deficiencies. (Ra5, 4/22/2025 entry; Ra36-Ra38). Appellant filed his fourth attempt at a compliant brief on May 22, 2025, which resulted in yet another deficiency notice on June 9, 2025[2]. (Ra78-Ra80). Appellant filed his fifth attempt at a compliant brief on June 23, 2025. This time, by way on notice dated June 25, 2025, the brief was approved.

COUNTERSTATEMENT OF FACTS

Appellant had been employed by Respondent as a patrol officer. He was served with charges on November 15, 2022, seeking his termination for false reporting and gross misuse of firearms in connection with two incidents involving the dispatching of wild animals. (Ra45, Ra47-Ra49). In particular, he was charged, *inter alia,* with filing false and misleading reports regarding

[2] Respondent had filed a motion to dismiss Appellant's appeal on May 20, 2025. The Court denied the motion in part on June 9, 2025, but warned that continued failure to file a compliant brief could result in dismissal of the appeal.

September 9, 2022, and September 25, 2022, incidents regarding the use of his service weapons to dispatch wild animals. In each case, he deliberately and falsely understated by a large margin the number of rounds he had fired to avoid being held accountable for his extreme negligence and incompetence in the use of his service weapon. (Id.) Appellant was placed on notice that these charges of false reporting constituted conduct equivalent to the crimes of False swearing, *N.J.S.A.* 2C:28-2(a); Unsworn falsification to authorities, N.J.S.A. 2C:28-3(b); Tampering with public records or information, N.J.S.A. 2C:28-7(a); Official misconduct, N.J.S.A. 2C:30-2; and, Pattern of official misconduct, N.J.S.A. 2C:30-7(a). (Ra45-Ra47).

Appellant was suspended without pay pending disposition of those charges on the same day on which he was served. (Ra45). He has not returned to duty since.

Respondent is a non-Civil Service jurisdiction.

Following a departmental hearing conducted pursuant to N.J.S.A. 40A:14-147, a hearing officer designated by the Township issued a report on March 1, 2024, recommending Appellant's termination. Respondent's Mayor and Council adopted the hearing officer's recommendation on May 2, 2024. Appellant filed his Request with PERC on or about June 3, 2024. (Pa1). Respondent moved to dismiss Appellant's application that same day, (id.) on the ground that the statute

governing the Special Disciplinary Arbitration (SDA) process is not available to officers facing charges that allege "conduct that also would constitute a violation of the criminal laws of this State or any other jurisdiction." See, e.g., N.J.S.A. 40A:14-210. Appellant had been charged with making false statements in official police department records, a violation of N.J.S.A. 2C:28-7(a), which is considered a criminal offense under New Jersey law. Notably, the Hearing Officer had sustained those charges and agreed that Appellant's conduct would constitute a criminal offense under N.J.S.A. 2C:28-7(a). PERC was provided with a copy of a copy of the Hearing Officer's decision as an Exhibit to Respondent's motion papers, which spelled out the charges against Appellant, the Hearing Officer's findings, and the supporting evidence. (Ra39-Ra57).

On July 2, 2024, PERC granted Respondent's motion, holding that the disciplinary charges against Appellant related to conduct that would constitute a violation of the criminal laws of New Jersey; specifically, N.J.S.A. 2C:28-7(a). PERC reasoned that the criminal violation exclusion of N.J.S.A. 40A:14-210(a) "does not require a formal criminal investigation, the filing of criminal charges, or citations to criminal statutes in the disciplinary investigation or disciplinary charges." (Pa2). Appellant failed to provide any certification from a law enforcement official or expert that would challenge the assertion that the Appellant's conduct was equivalent to a criminal violation. (Id.)

As noted, Appellant moved for reconsideration of PERC's decision on July 17, 2024. (Pa3). Appellant cited no statute or agency rule allowing for reconsideration in this matter, and with excellent reason: None exists. Appellant also sought to submit new evidence that it had not submitted in its original motion. PERC denied reconsideration on the ground that its rules did not allow for reconsideration of decisions in SDA matters, and, in the alternative, on the ground that Appellant had belatedly introduced new evidence without providing an adequate explanation. (Pa3-Pa4). This appeal followed.

STANDARD OF REVIEW

This is an appeal from the final decision of a State administrative agency. Our State Supreme Court has held that:

> [t]he judicial role when reviewing an action of an administrative agency is generally restricted to three inquiries: (1) whether the agency's action violates express or implied legislative policies, that is, did the agency follow the law; (2) whether the record contains substantial evidence to support the findings on which the agency bases its action; and (3) whether, in applying the legislative policy to the facts, the agency erred in reaching a conclusion that could not reasonably have been made on a showing of the relevant factors.

Matter of Ridgefield Park Bd. of Educ., 244 N.J. 1, 16 (2020).

In particular, "[i]n the absence of constitutional concerns or countervailing expressions of legislative intent, we apply a deferential standard of review to determinations made by PERC." Id., quoting City of Jersey City v.

Jersey City Police Officers Benevolent Ass'n, 154 N.J. 555, 567 (1998). PERC's determinations will not be overturned "in the absence of a showing that it was arbitrary, capricious or unreasonable, or that it lacked fair support in the evidence, or that it violated a legislative policy expressed or implicit in the governing statute." Communications Workers of America, Loc. 1034 v. N.J. State Policemen's Benevolent Ass'n, Local 203, 412 N.J. Super. 286, 291 (App. Div. 2010)(internal quotation marks omitted).

And although the courts are not bound by an agency's determinations of law, courts normally defer to agency interpretations of their enabling statutes so long as those interpretations are reasonably debatable. In re Musick, 143 N.J. 206, 216-7 (1996); Edison Tp. Bd. of Educ. v. Edison Tp. Principals and Supervisors Ass'n, 304 N.J. Super. 459, 464 (App. Div. 1997)(applying Musick to PERC).

The Court cannot substitute its own judgment for the agency's, even if the Court would have reached a different result. In re Stallworth, 208 N.J. 182, 194 (2011). "This is particularly true when the issue under review is directed to the agency's special expertise and superior knowledge of a particular field." Id. at 195; quoting In re Herrmann, 192 N.J. 19, 28 (2007).

This case involves the SDA statute that PERC is responsible for administering. N.J.S.A. 40A:14-209, *et seq.* These statutes exclude from

statutory disciplinary arbitration any disciplinary complaints or charges that allege conduct that also would constitute a violation of the criminal laws of this State or any other jurisdiction. N.J.S.A. 40A:14-209(a). PERC interpreted this statute, which it is responsible for enforcing, (N.J.S.A. 40A:14-210(b); N.J.S.A. 40A:14-211(b)), to bar Appellant from SDA because the conduct alleged against him would also constitute a violation of New Jersey's criminal laws. PERC's interpretation of N.J.S.A. 40A:14-209(a) is reasonable, and there is substantial evidence on the record to support PERC's findings. PERC's decision should be affirmed.

ARGUMENT

POINT I

THE INSTANT APPEAL IS UNTIMELY FILED BECAUSE IT WAS NOT PROPERLY PERFECTED WITHIN 45 DAYS OF THE FINAL DECISION OF A STATE ADMINISTRATIVE AGENCY (NOT RAISED BELOW).

An appeal from a final decision of a State administrative agency must be perfected within 45 days of the date of service of the decision or notice of the action taken. R. 2:4-1(b). To be perfected, the notice of appeal must be properly filed with the court and served on all respondent parties within this time. Alberti

v. Civil Service Comm'n, 41 N.J. 147, 154 (1963); Sturmer v. Township of Readington, 90 N.J. Super. 341, 345 (App. Div. 1966). That was not done here.

PERC issued its final decision in this matter on July 2, 2024, and served its decision on each party that same day via electronic mail. Appellant filed his initial Notice of Appeal on August 16, 2024, exactly forty-five days later. But that Notice of Appeal was seriously flawed. It contained the improper case name, did not identify the proper Respondent, and did not list the proper attorney for the Public Employment Relations Commission. (Ra12, Ra14). It took Appellant three additional tries to properly file a correct Notice of Appeal, which did not happen until September 12, 2024. (Ra23). But by that time, the forty-five-day period for perfecting an appeal had long since run. Appellant's appeal is therefore untimely.

Appellant's application for reconsideration is of no avail to him. Under R. 2:4-3(b), the time for taking an appeal will be tolled by a timely motion for consideration made to a State administrative agency "pursuant to [the agency'] rules and practice." But PERC has no rule or practice allowing reconsideration of final decisions dismissing SDA requests. Appellant is entitled to no tolling under R. 2:4-3(b).

Respondent previously moved for dismissal of Appellant's appeal citing, *inter alia,* his failure to perfect his appeal in a timely fashion. The motion was

denied in part. (Ra76). However, the denial of such a motion, in the absence of an affirmative order allowing a late appeal *nunc pro tunc*, merely preserves the issue "for later review in the context of the plenary appeal." See, Parker v. City of Trenton, 382 N.J. Super. 454, 457 (App. Div. 2006).

Therefore, Appellant's appeal must be dismissed because it was untimely filed.

POINT II

PERC CORRECTLY DETERMINED THAT APPELLANT'S DISCIPLINARY CHARGES RELATED TO CRIMINAL CONDUCT AND ARE BARRED FROM SPECIAL DISCIPLINARY ARBITRATION, REGARDLESS OF PROSECUTORIAL DISCRETION OR THE ABSENCE OF FORMAL CHARGES (RAISED BELOW AT Pa1-Pa2).

The charges issued against Appellant alleged, *inter alia,* that he had falsely reported the number of rounds he had fired to dispatch wild animals on two separate incidents occurring, respectively, on September 9 and 25, 2022. (Ra45, Ra47-Ra49). Because these false statements were contained in official police department records, it was alleged that Appellant's misconduct was the equivalent of criminal offenses involving dishonesty, including but not limited to N.J.S.A. 2C:28-7(a), which makes it a criminal offense for any person to knowingly make a false entry in a government record. (Ra45-Ra47). The Hearing Officer who sat below found Appellant guilty of false reporting the

number of rounds he fired on September 9 and 25, 2022, (Ra49-Ra53), and further reasoned that the criminal statute N.J.S.A. 2C:28-7(a) "appears to most closely track the factual pattern" of the case. (Ra47).

N.J.S.A 40A:14-210(a) allows police officers and firefighters in non-Civil Service jurisdictions to appeal disciplinary terminations to SDA in lieu of seeking *de novo* review in the Superior Court pursuant to N.J.S.A. 40A:14-150. PERC is responsible for adopting rules and regulation for "effectuating the purposes" of the SDA process. N.J.S.A. 40A:14-211(b); see also N.J.S.A. 40A:14-210(b). However, N.J.S.A 40A:14-210(a) expressly excludes from the SDA process any matter involving "a complaint or charges relating to a criminal offense as prescribed in subsection a. of section 10 of P.L.2009, c.16 (C.40A:14-209)."

N.J.S.A. 40A:14-209(a), in turn, authorizes police officers and firefighters who are suspended without pay pending termination to likewise elect SDA in lieu of a *de novo* appeal to Superior Court[3]. However, it contains the following exclusions from SDA:

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[3] N.J.S.A. 40A:14-209 addresses the specific case of police officers and firefighters who are suspended without pay pending hearings on termination charges. In addition to allowing the SPA option, N.J.S.A. 40A:14-209 additionally imposes time limits on the duration of such suspensions. N.J.S.A. 40A:14-210 allows for the SPA option in termination cases not involving suspensions pending hearings. Each statute, however, incorporates the exclusion from the SPA process for complaints or charges that allege conduct that also

> (1) a complaint or charges relating to the subject matter of a pending criminal investigation, inquiry, complaint, or charge whether pre-indictment or post indictment, or (2) *when the complaint or charges allege conduct that also would constitute a violation of the criminal laws of this State or any other jurisdiction*. (Emphasis added).

As noted, these exclusions are incorporated by reference into N.J.S.A 40A:14-210(a).

The exclusionary language of N.J.S.A. 40A:14-209(a) – incorporated by reference into N.J.S.A. 40A:14-210 – is triggered not only by the issuance of criminal charges, a criminal indictment, or a criminal conviction. It is also triggered when the disciplinary charges against the officer allege conduct that would also constitute a criminal violation. N.J.S.A. 40A:14-209(a)(2).

N.J.S.A. 40A:14-210 itself contains language excluding from SDA any complaint or charges “relating to a criminal offense.” The word "relating" is defined as "to show or establish logical or causal connection between." Merriam-Webster Dictionary (2017).

The overriding goal of all statutory interpretation is to determine the intent of the Legislature and give effect to that intent. The best indicator of that intent is the plain language chosen by the Legislature. If the statutory terms are clear and unambiguous based on a plain and ordinary reading of the statute, then the

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would constitute a violation of the criminal laws. Matter of Diguglielmo, 252 N.J. 350, 368-9 (2022).

interpretative process ends, and the courts "apply the law as written." State v. J.V., 242 N.J. 432, 442-3 (2020), citing Murray v. Plainfield Rescue Squad, 210 N.J. 581, 592 (2012). In this case, the "law as written" is clear. SDA is not available when a police officer (or firefighter) faces disciplinary charges alleging conduct that would also constitute a criminal violation.

Thus, PERC's interpretation of N.J.S.A. 40A:14-210(a) in this matter is entirely consistent with the plain language of that statute, and the plain exclusionary language of N.J.S.A. 40A:14-209(a)(2) incorporated into N.J.S.A. 40A:14-210(a) by reference. Further, the Legislature expressly delegated to PERC the authority to "promulgate rules and regulations to effectuate the purposes of" the SDA statutes. N.J.S.A. 40A:14-211(b). At the very least, PERC's interpretation of the statutes it is charged with enforcing is "reasonably debatable" and warrants this Court's deference. In re Musick, 143 N.J. at 216-7; Edison Tp. Bd. of Educ., 304 N.J. Super. at 464.

As correctly reasoned by PERC, the exclusionary language of N.J.S.A. 40A:14-209(a)(2) – incorporated by reference into N.J.S.A. 40A:14-210(a) – does not require a formal criminal investigation, the filing of formal criminal charges, or an actual criminal conviction. The mere alleging of conduct that would also constitute a criminal violation is sufficient to disqualify one from the SDA process.

Appellant argues that he should not be excluded from the SDA process because no criminal charges were actually pursued against him. This argument fails based on the clear language of N.J.S.A. 40A:14-209(a)(2). Indeed, to accept Appellant's argument would be effectively to write N.J.S.A. 40A:14-209(a)(2) out of the statute and render it a nullity, as it would then merely duplicate the language of N.J.S.A. 40A:14-209(a)(1)[4]. In interpreting a statute, courts strive to give effect to every word rather than to ascribe a meaning that would render part of the statute superfluous. New Jersey Dept. of Children and Families, Div. of Youth and Family Services v. I.S., 214 N.J. 8, 36 (2013). Appellant's argument must therefore be rejected.

Appellant cites hearing testimony from the Township's Chief of Police during the December 20, 2023, hearing, to the effect that the Prosecutor returned the case because it was "not enough to charge criminally." However, this statement reflects only the Prosecutor's discretionary decision not to prosecute. Prosecutors have discretion in deciding whether to pursue criminal charges in individual cases based on a variety of factors. State v. LeVien, 44 N.J. 323, 326-7 (1965). See gen., Hassan v. Magistrates Court of City of New York, 20

[4] As noted, N.J.S.A. 40A:14-209(a)(1) separately excludes from the SDA process any "complaint or charges relating to the subject matter of a pending criminal investigation, inquiry, complaint, or charge whether pre-indictment or post indictment."

Misc.2d 509, 191 N.Y.S.2d 238 (Sup. Ct. 1959), cert. denied 364 U.S. 844, 81 S. Ct. 86, 5 L. Ed. 2d 68 (1960); Leone v. Fanelli, 194 Misc. 826, 87 N.Y.S.2d 850 (Sup. Ct. 1949); Graham v. Gaither, 140 Md. 330, 117 A. 858 (Ct. App. 1922); Murphy v. Sumners, 54 Tex. Cr. R. 369, 112 S.W. 1070 (Crim. App. 1908). Appellant cites no case law to the contrary and cites no authority to dispute the conclusion that the filing of false police reports is the equivalent of false reporting in violation of N.J.S.A. 2C:28-7(a). The Chief's testimony cited by Appellant is thus of no avail to him.

Having demonstrated that PERC properly interpreted the applicable statutes, it is also clear that the record contains substantial evidence to support PERC's findings, and that PERC reached a conclusion that is entirely reasonable based on a showing of the relevant factors. Matter of Ridgefield Park Bd. of Educ, 244 N.J. at 16.

Appellant was charged with multiple instances of false reporting on official police department records. He falsely reported the number of rounds he used to dispatch a raccoon on one occasion and to dispatch a fox on a separate occasion. (Ra45, Ra47-Ra49). Not only was he charged with this false reporting, but the Hearing Officer also found that the Township had proven that Appellant had falsely reported in official police records, on two separate occasions, the number of rounds he had fired. (Ra49-Ra53). Both the charges and the Hearing

Officer's detailed findings regarding same were thus on the record below before PERC. (Ra39-Ra57). There is accordingly more than sufficient evidence on the record to support PERC's conclusion that the charges against Appellant are related to, and allege conduct that would also constitute, the making false statements in official police department records in violation of N.J.S.A. 2C:28-7(a). PERC's decision was reasonably grounded in specific, substantiated application of the applicable factors. Matter of Ridgefield Park Bd. of Educ, 244 N.J. at 16.

This matter is strikingly similar to Isaacson v. PERC, A-2991-14T4, 2017 N.J. Super. Unpub. LEXIS 466 (App. Div. 2017), certif. den., 230 N.J. 530 (2017)(Pa15-Pa20). As in this case, the officer in Isaacson had filed false police reports about an incident in which he was involved. Id. at *1-*4, (Pa15-Pa16). As in this case, although the matter was referred to the relevant Prosecutor's Office for review, no criminal prosecution was initiated. Id. at *3-*4, (Pa16). As in this case, the allegations against the officer also constituted the crime of false swearing under, *inter alia,* N.J.S.A. 2C:28-7. Id. at *15-*16, (Pa19-Pa20). PERC, as affirmed by this Court, found that the officer in Isaacson was not entitled to SDA:

> …PERC correctly found[,] based on ample credible evidence in the record, the charges related to a criminal offense, and the alleged conduct also would constitute a violation of the criminal laws of this State. Contrary to Isaacson's view, none of these statutes requires a

> formal criminal investigation, the filing of formal criminal charges, a criminal conviction, or citation to the criminal statutes in the disciplinary investigation or disciplinary charges. Notice to the officer specifying the factual basis for the alleged criminal conduct is sufficient. Id. at *14-*15, (Pa19).

Appellant in this case clearly received notice of the specific factual basis for the alleged criminal conduct. And unlike the officer in Isaacson, Appellant further received citation to the relevant criminal statutes in his disciplinary charges, putting him on notice that SDA would not be available to him.[5] If the officer in Isaacson was properly denied SDA, so was Appellant.

PERC's decision below should be affirmed.

POINT III

PERC PROPERLY DENIED APPELLANT'S REQUEST FOR RECONSIDERATION (RAISED BELOW AT Pa3-Pa4).

Appellant argues that PERC was obligated to consider his motion for reconsideration. Appellant's argument is entirely lacking in merit.

First and foremost, PERC's rules pertaining to SDA do not allow for reconsideration. The Legislature authorized PERC to issue rules and regulations that "include, but not be limited to[,] practices and procedures governing matters

[5] This is undoubtedly why Appellant never sought to invoke the provisions of N.J.S.A. 40A:14-209 despite having been suspended without pay pending his disciplinary hearing.

such as discovery, motions and the conduct of hearings." N.J.S.A. 40A:14-211(a). PERC's rules governing SDA are found at N.J.A.C. 19:12-6.1, et seq.[6] The specific rule governing motions to dismiss requests for appointments from the SPA Panel is found at N.J.A.C. 19:12-6.5. Neither that rule, nor any other applicable provision of PERC's rules, allows for reconsideration of decisions on motions to dismiss SDA requests. This alone renders Appellant's argument meritless. Appellant cites no rule, regulation, or binding authority that would authorize or compel PERC to exercise reconsideration authority when its own procedural rules preclude it.

Even assuming PERC had granted itself reconsideration authority, Appellant failed to meet the applicable standards, as PERC correctly held. The evidence Appellant submitted—testimony from the Township's Chief of Police referencing the Prosecutor's declination to file charges—was not newly discovered. It was available and known to Appellant at the time of the original proceedings and could have been submitted with reasonable diligence. "A motion for reconsideration may be properly denied if based on unraised facts

[6] Notably, this Subchapter of PERC's Rules is titled, "BINDING ARBITRATION TO REVIEW DISCIPLINARY TERMINATIONS, *NOT INVOLVING ALLEGED CRIMINAL CONDUCT*, OF NON-CIVIL SERVICE LAW ENFORCEMENT OFFICERS AND FIREFIGHTERS." (Emphasis added).

known to the movant prior to entry of judgment or order in question. Del Vecchio v. Hemberger, 388 N.J. Super. 179, 188-90 (App. Div. 2006).

Capital Finance Co. of Del. Valley, Inc. v. Asterbadi, 398 N.J. Super. 299, 310 (App. Div. 2008) speaks to this point:

> Reconsideration cannot be used to expand the record and reargue a motion. Reconsideration is only to point out the matters or controlling decisions which counsel believes the court has overlooked or as to which it has erred. A motion for reconsideration is designed to seek review of an order based on the evidence before the court on the initial motion, not to serve as a vehicle to introduce new evidence in order to cure an inadequacy in the motion record.

Further, motions for reconsideration are available only "when the court's order is based on plainly incorrect reasoning, when the court failed to consider evidence, or there is good reason for it to consider new information on an issue decided." Cummings v. Bahr, 295 N.J. Super. 374, 384-385 (App. Div. 1996). As stated in D'Atria v. D'Atria, 242 N.J. Super. 392, 401 (Ch. Div. 1990):

> Reconsideration should be utilized only for those cases which fall into that narrow corridor in which either 1) the Court has expressed its decision based upon a palpably incorrect or irrational basis, or 2) it is obvious that the Court either did not consider, or failed to appreciate the significance of probative, competent evidence.
>
> None of those factors is present in this case.

Simply put, even if PERC had the authority to consider a motion for reconsideration, Appellant did not satisfy the standard required for reconsideration. The evidence he relied on was not new. It was available and

known to him at the time of the original proceedings. He had every opportunity to present it but failed to do so. Reconsideration is not intended to relitigate issues, cure defects in a party's initial argument, or give a party the opportunity to raise new arguments when his initial arguments fail.

PERC properly denied Appellant's request for reconsideration.

CONCLUSION

For the foregoing reasons, PERC's final decision dismissing Appellant's request for SDA was lawful, reasonable, and supported by substantial credible evidence. And PERC acted well within its lawful authority in declining to reconsider its final decision. PERC's final decision in this matter should be affirmed in its entirety.

Respectfully submitted,
THE CHILLA BUSINESS COUNSEL, LLC

/s/ *Stephen E. Trimboli*
Stephen E. Trimboli, Esq.

Dated: July 24, 2025

CARUSO SMITH PICINI

A PROFESSIONAL CORPORATION
ATTORNEYS AT LAW

60 Route 46 East, Fairfield, New Jersey 07004
973-667-6000 973-667-1200 facsimile

Timothy R. Smith
Of Counsel
Bar ID No. 030781998
Admitted in NJ, NY, and DC
Certified Criminal Trial Attorney
Managing Partner
tsmith@carusosmith.com

Zinovia H. Stone, Esquire
On the brief
Bar ID No. 335352021
Admitted in NJ, NY, D.C., and FL
zstone@carusosmith.com

September 8, 2025

Via eCourts
Alicia J. Levins, Case Manager
Appellate Clerks Office
Richard J. Hughes Justice Complex
P.O. Box 006
25 Market Street
Trenton, New Jersey 08625

Re: Steven Hars, Appellant v. Township of Clinton, Respondent
Docket No.: A-003962-23

Dear Ms. Levins:

Please accept this letter brief in lieu of a more formal brief on behalf of the appellant in the above captioned matter in reply to the opposition submitted by the State and the Township of Clinton ("Township"). Appellant relies on his procedural history and statement of facts that he submitted in his original brief and appendix.

TABLE OF CONTENTS

Table of Judgments, Orders, and Rulings Being Appealed

Table of Appendix[1]

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[1] Per New Jersey Court Rule 2:6-1(a)(2), Stephen Hars' motion for reconsideration (Pa011) is included in this Appendix, as it is referred to in the decision, dated August 5, 2024 per N.J. Ct. R. 2:6-1(a)(2), and this issue is germane to this appeal.

[1] Per New Jersey Court Rule 2:6-1(a)(2), Stephen Hars' motion for reconsideration (Pa011) is included in this Appendix, as it is referred to in the decision, dated August 5, 2024 per N.J. Ct. R. 2:6-1(a)(2), and this issue is germane to this appeal.

LEGAL ARGUMENT

POINT I. THE TOWNSHIP'S ARGUMENT THAT THE APPEAL WAS NOT TIMELY IS COMPLETELY WITHOUT MERIT. (Pa 001-004).

Pursuant to R. 2:4-1(b), an appeal from a final administrative decision is timely as long as it is filed within forty-five days of the final decision. As the Township concedes, the present appeal was filed forty-five days after the Public Employment Relations Commission ("PERC") issued its initial decision in this appeal. As such, the appeal was timely as per R. 2:4-1(b).

Despite citing no legal precedent that would allow for the notion that having to correct clerical errors in a notice of appeal somehow makes that notice of appeal untimely, the Township goes on to argue that the present appeal was untimely. The Township has cited no precedent to this effect because none exists. This Court accepted the appeal as timely and, as such, it is timely.

Similarly, nothing within the Court Rules or this State's jurisprudence requires that an appeal be retroactively deemed untimely because of deficiencies in an appeal brief. As such, the Township's arguments to this effect cannot even be deemed to be specious, as that would imply that they had some plausibility to them. For these reasons, the Township's argument that the present appeal was untimely is completely without merit.

POINT II. WHEN BOTH THE STATE PROSECUTION AND THE EMPLOYING AGENCY ASSERT THAT THERE WILL BE NO CRIMINAL INVESTIGATION AND/OR CHARGES LEVIED, THE ALLEGATIONS CANNOT BE DEEMED TO BE CRIMINAL IN NATURE, AND PERC ERREDIN REFUSING TO GRANT SPECIAL DISCIPLINARY ARBITRATION ON THOSE GROUNDS. (Pa 001-004).

The Township opines extensively on its assertion that the appellant committed a crime enumerated under N.J.S.A 2C:28-7(a). Those types of crimes have a mens rea of "knowingly" and/or "purposely." Thus, an officer who is asked to describe how many rounds he fired from his gun would only be committing a crime under N.J.S.A. 2C:28-7(a) if he "knowingly" or "purposely" misstated how many rounds he fired. He would not be committing a crime under this statute if he did not remember how many rounds he fired, remembered incorrectly, or estimated how many rounds he fired. It is likely for this reason that the Hunterdon County Prosecutor's Office ("HCPO") issued a formal letter indicating that it would not prosecute the appellant for any alleged criminal activity relating to the disciplinary charges at issue. (Pa 060).

Specifically, the HCPO issued a notice stating that "under the circumstances, criminal prosecution is not warranted. This investigation may continue at an administrative level within your department for whatever action you deem necessary." Id. Based upon this, Chief DeRosa acknowledged that "when they send it back, basically it's not enough to charge criminally." (Pa

166). It should be noted that, to the extent that the Township argues that any documentation related to the motion for reconsideration should not be part of this record, the letter from the Prosecutor's office was read into the record at Officer Hars' hearing relating to his removal from the payroll and was thus already part of the record. The transcript reflects this.

Thus, setting aside the fact that it is ridiculous for the respondent to assert that the appellant committed any crime in this matter, the issue of whether the charges at hand are criminal in nature has already been decided. The HCPO has decided that there are no criminal allegations at hand and has declined to prosecute the appellant. (Pa 060). Chief DeRosa agrees with this assessment and admitted as such, stating that "it's not enough to charge criminally." (Pa 166). As such, the respondent's position that the appellant committed the equivalent of a crime in responding to internal affairs questions is untenable.

N.J.S.A. 40A:14-210(a) allows municipal police officers to submit their appeals to special disciplinary arbitration ("SDA") unless there is a "complaint or charges relating to a criminal offense." P.L.2009, c.16 defines this exception further as "(1) a complaint or charges relating to the subject matter of a pending criminal investigation, inquiry, complaint, or charge whether pre-indictment or post-indictment, or (2) when the complaint or charges allege

conduct that also would constitute a violation of the criminal laws of this state or any other jurisdiction..." In the present matter, there is no pending criminal investigation or inquiry as the HCPO has decided not to prosecute the appellant. In addition, the conduct cannot constitute a violation of the criminal laws of this state or any other jurisdiction since both the HCPO and Chief DeRosa agree that the evidence against the appellant "[is] not enough to charge criminally." (Pa 166). Therefore the respondent's position that the appellant's alleged conduct is equivalent to criminal conduct is not only untenable, it is disingenuous.

The respondent's position, that the Court should adopt an overbroad definition of "related to" as defined in the English dictionary is unreasonable. Under this logic, an officer would be deemed to have committed official misconduct under N.J.S.A. 2C:30-2[2] if he borrows another officer's pen and does not return it. The legislature did not intend to define "related to" so broadly as to allow an appointing authority to use it to deprive officers of SDA for any infraction no matter how minor.

Isaacson v. PERC is distinguishable from the present matter. First, as the Court correctly held in that matter, disciplinary charges only relate to

[2] N.J.S.A. 2C:30-2 defines "official misconduct" as committing an act relating to one's public office in order to deprive another, injure another, or reap a benefit for him or herself.

criminal conduct where there is "ample credible evidence on the record" to support such a finding. 2017 N.J. Super. Unpub. 1, 14 (App. Div. 2017); (Pa 015-020). The respondent's bald statement that disciplinary charges relate to a specific criminal statute without further proof that the appellant actually committed any of the acts alleged is insufficient. Such a broad reading of the statute would allow an appointing authority to avoid SDA by merely tacking criminal statutes onto their statement of charges.

In addition, Isaacson differs from this case. The officer in that case made false statements as they were occurring. Id. at 1-3. He falsely reported actions that he was taking as they were playing out. Id. Conversely, the appellant is accused of misremembering how many shots he fired from his weapon. As recognized by the hearing officer in this case, the appellant believed that he had fired six rounds from his weapon and completed a form to this effect. (Pa 023). After reviewing the videos of the incident, he realized that he had fired thirteen rounds and voluntarily corrected the form to indicate the correct number of rounds. Id. This is vastly different than the actions of the officer in Isaacson who was alleged to be misrepresenting his actions as they were occurring. 2017 N.J. Super. Unpub. at 1-3.

Since there is not any evidence on the record that the appellant knowingly gave false information relating to the disciplinary charges against

him, it cannot be said that "ample evidence" exists to find that his actions "related to" the crime enumerated under N.J.S.A. 2C:28-7(a). For these reasons, PERC erred when it denied the appellant the right to file his appeal via SDA.

POINT III. THE APPELLANT HAS THE RIGHT TO FILE A MOTION FOR RECONSIDERATION, AND PERC ERRED WHEN IT REFUSED TO HEAR HIS MOTION. (Pa 001-004).

The respondent and the State are both incorrect in opining that PERC does not hear motions for reconsideration. Under N.J.A.C. 19:14-8.4, PERC is authorized to hear motions for reconsideration under the following circumstances:

> After a Commission decision has been issued, a party may move for reconsideration. Any motion pursuant to this section shall be filed within 15 days of service of the Commission decision, together with proof of service of a copy on all other parties. Reconsideration will only be granted based on a demonstration of extraordinary circumstances and exceptional importance. The movant shall specify and bear the burden of establishing the grounds warranting reconsideration. Any party opposing reconsideration may file a response within five days of service on it of the motion, together with proof of service of a copy on all other parties. No further submissions shall be filed except by leave of the Commission…

Additionally, a motion to reconsider is applicable "when the [agency's] decision is based on plainly incorrect reasoning or when the [agency] failed to consider evidence or there is good reason for it to reconsider new

information." Cuevas v. Chrysler Corp., A-6253-09T1, 2011 WL 2410343 (N.J. Super. Ct. App. Div. June 10, 2011).

"Alternatively, if a litigant wishes to bring new or additional information to the [agency's] attention which it could not have provided on the first application, the [agency] should, in the interest of justice (and in the interest of sound discretion), consider the evidence." D'Atria v. D'Atria, 242 N.J. Super. 392, 576 (Ch. Div. 1990). In Cummings v. Bahr, 295 N.J. Super. 374, 384, (App. Div. 1996), the court held that "reconsideration is a matter within the sound discretion of the Court, to be exercised in the interest of justice." While N.J.A.C. 19:14-8.4 does not necessarily pertain to special disciplinary arbitration in police disciplinary matters, it shows that the Commission can, and does, hear motions for reconsideration. As such, PERC should have, at the very least, considered whether good cause existed to hear a motion for reconsideration. Therefore, PERC erred when it claimed not to hear motions for reconsideration under any circumstances and should have considered the appellant's motion in this regard.

Conclusion

For the foregoing reasons, this Court should grant the appellant's appeal and allow him to file for special disciplinary arbitration with PERC.

Respectfully submitted,
CARUSO SMITH PICINI, P.C.
Attorneys for Stephen Hars

Zinovia H. Stone, Esq.

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