

STATE OF NEW JERSEY  
CIVIL SERVICE COMMISSION  
AND  
PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of	:
	:
MARK FOSTER, STEVEN LEWIS,	:
BRAINARD SAMUELS, HUDSON	:OAL DKT NO. CSV 6378-07
WILLIAMS AND CARL WINROW,	:AGENCY DKT NO. 2007-570-1
Appellants,	:
v.	:
CITY OF TRENTON HOUSING	:
AUTHORITY,	:
Respondent.	:
	:
CITY OF TRENTON HOUSING	:
AUTHORITY,	:
Respondent,	:PERC DKT NO. CO-2007-039
-and-	:
COMMUNICATIONS WORKERS OF	:
AMERICA, AFL-CIO,	:
Charging Party.	:

SYNOPSIS

The Public Employment Relations Commission and the Civil Service Commission issued a joint order consolidating an unfair practice charge and layoff appeal filed by the CWA and individual unit members against the City of Trenton. The joint order requires the cases to be consolidated before an administrative law judge for hearing. The ALJ will issue a single initial decision to both agencies disposing of all issues in controversy. PERC will review the record first to determine whether protected activity was a substantial or motivating factor in the layoff. PERC's decision and the record will then be transferred to the Civil Service Commission to determine whether the layoff was for legitimate business reasons and otherwise warranted under Civil Service law. If appropriate, the case will be transferred back to PERC for consideration of whether specialized relief is required under the Act.

This synopsis is not part of the Commission decision. It has been prepared for the convenience of the reader. It has been neither reviewed nor approved by the Commission.

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Appearances:

For the Appellant-Charging Party, Weissman & Mintz,  
attorneys (Rosemarie Cipparulo, attorney)

For the Respondent, Sumners George, attorneys (Harold  
W. George, attorney)

DECISION

On August 3, 2006, the Communications Workers of America ("CWA") filed an unfair practice charge against the City of Trenton. The charge alleges that the Trenton Housing Authority violated N.J.S.A. 34:13A-5.4(a)(1), (2), (4), (5) and (7) of the Employer-Employee Relations Act when it laid off bargaining unit members without notice to the CWA after the affected employees were successful in a grievance arbitration that awarded back pay and interest to the employees.

On August 4, 2006, the CWA filed an appeal to the Merit System Board<sup>1/</sup> on behalf of Mark Foster, Steven Lewis, Brainard Samuels, Hudson Williams and Carl Winrow. The appellants allege that the layoff was in bad faith and in violation of Civil Service regulations because procedures were not followed and the majority representative was not notified. The appeal was transmitted to the Office of Administrative Law as a contested case on August 9, 2007.

On January 4, 2008, the CWA filed a motion for consolidation and a determination of predominant interest. It argued that both actions arise from the City's layoff plan and the motivation for that plan. On May 6, the City advised the Administrative Law Judge that it did not object to the motion.

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<sup>1/</sup> On June 30, 2008, Public Law 2008, Chapter 29 was signed into law and took effect, changing the Merit System Board to the Civil Service Commission.

On May 9, 2008, Administrative Law Judge Donald J. Stein issued an Order of Consolidation and Predominant Interest. He found that neither agency has the clear predominant interest, but PERC has the severable unfair practice issue. He therefore directed that the Public Employment Relations Commission has the predominant interest.

Having independently evaluated the record and considered the Administrative Law Judge's Order, the Civil Service Commission at its meeting on August 27, 2008 and the Chairman of the Public Employment Relations Commission, acting pursuant to authority delegated to him by the full Commission, on August 11, 2008 made the following determination in this matter.

JOINT ORDER

The above matters are consolidated for hearing before the Administrative Law Judge. The Judge will first offer recommended findings of fact and conclusions of law to both the Public Employment Relations Commission and the Civil Service Commission, disposing of all issues in controversy through a single initial decision under N.J.S.A. 1:1-18.3 and consistent with N.J.A.C. 1:1-17.8(a); and

Upon transmittal of the initial decision to both agencies, the underlying record will be forwarded to the Public Employment Relations Commission to determine whether protected activity was a substantial or motivating factor in the layoff; and

The Public Employment Relations Commission's decision and the complete record will then be sent to the Civil Service Commission, which will then determine whether the layoff was for legitimate business reasons and was otherwise warranted under Civil Service Law; and

Where appropriate, the matter will be returned to the Public Employment Relations Commission for its consideration of whether specialized relief is warranted under its Act.

DECISION RENDERED BY THE CIVIL  
SERVICE COMMISSION ON  
AUGUST 27, 2008

Margaret E. L. Howard  
Margaret E. L. Howard  
Presiding Member  
Civil Service Commission  
Trenton, New Jersey

DECISION RENDERED BY THE  
CHAIRMAN OF THE PUBLIC  
EMPLOYMENT RELATIONS  
COMMISSION ON August 11, 2008

Lawrence Henderson  
Lawrence Henderson  
Chairman  
Trenton, New Jersey