

P.E.R.C. NO. 2011-54

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

ATLANTIC COUNTY DEPARTMENT
OF PUBLIC SAFETY,

Respondent,

-and-

OAL Docket No. CSV 8377-09
Agency Docket No. 2009-3217

CHRISTOPHER M. CARTY,

Appellant.

COUNTY OF ATLANTIC,

Respondent,

-and-

Docket No. CO-2009-323

FRATERNAL ORDER OF POLICE
LODGE NO. 34,

Charging Party.

SYNOPSIS

The Public Employment Relations Commission adopts the initial decision of a PERC Hearing Examiner designated as a Special Administrative Law Judge in a consolidated action with a Civil Service appeal. The decision finds that the parties' settlement agreement meets the requirements of N.J.A.C. 1:1-19.1. PERC transfers the case to the Civil Service Commission for its consideration of the initial decision.

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 Respondent, Eric M. Bernstein & Associates,
L.L.C. (Deborah J. Bracaglia, of counsel)

For the Appellant/Charging Party, Selikoff & Cohen,
P.A. (Keith Waldman, of counsel)

DECISION

This case comes to us to issue a final decision after a
Public Employment Relations Commission Hearing Examiner

designated as a Special Administrative Law Judge issued an Initial Decision on November 23, 2010.^{1/}

On March 17, 2009, the Fraternal Order of Police Lodge No. 34 filed an unfair practice charge against the County of Atlantic. The charge alleges that the employer violated the New Jersey Employer-Employee Relations Act, N.J.S.A. 34:13A-1 et seq., when the Appellant requested and was denied union representation after his arrest by the Winslow Township Police Department which led to the proffer of his resignation. The Appellant also filed an appeal with the Civil Service Commission pursuant to N.J.A.C. 4A:2-6.1(d), asserting that his resignation was the result of duress and coercion. On July 8, 2009, the Civil Service Commission transmitted the case to the Office of Administrative Law for a hearing as a contested case pursuant to N.J.S.A. 52:14B-1 to 15 and N.J.S.A. 52:14F to 13.

A Joint Order of Consolidation and Predominant Interest was issued consolidating the unfair practice charge and the Civil Service appeal for hearing before a PERC Hearing Examiner designated as a Special Administrative Law Judge. P.E.R.C. No. 2010-32, 35 NJPER 427 (¶138 2009). PERC was determined to have the predominant interest. During the course of the proceedings before the Special Administrative Law Judge, the parties engaged

^{1/} The Initial Decision is attached hereto in the appendix.

in settlement discussions and ultimately entered into a settlement agreement. As part of the settlement agreement, the charging party withdrew the unfair practice charge.

The Initial Decision finds that the settlement agreement meets the requirements of N.J.A.C. 1:1-19.1. We adopt the Initial Decision. This case will now be transferred to the Civil Service Commission for its consideration of the Initial Decision.

ORDER

The Initial Decision of the Hearing Examiner designated as a Special Administrative Law Judge is hereby adopted.

BY ORDER OF THE COMMISSION

Chair Hatfield, Commissioners Bonanni, Colligan, Eaton, Eskilson, Kregel and Voos voted in favor of this decision. None opposed.

ISSUED: February 3, 2011

Trenton, New Jersey

APPENDIX

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

In the Matter of

ATLANTIC COUNTY DEPARTMENT
OF PUBLIC SAFETY

Respondent,

-and-

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INITIAL DECISION **SETTLEMENT**

This matter arises out of certain events that transpired during the night of February 5 and early morning hours of February 6, 2009. On February 6, 2009, Appellant submitted a

letter of resignation to officials from the Atlantic County Department of Public Safety, Division of Adult Detention, effective immediately. The appointing authority accepted the Appellant's written resignation. On February 22, 2009, Appellant requested that his resignation be rescinded. On March 2, 2009, the County advised the Appellant that it would not consent to the rescission of his resignation.

On March 17, 2009, the Fraternal Order of Police Lodge No. 34 (FOP) filed an unfair practice charge with the Public Employment Relations Commission (PERC) against the County of Atlantic. The charge alleges that the employer violated the New Jersey Employer-Employee Relations Act, N.J.S.A. 34:13A-1 et seq., when the Appellant requested and was denied union representation after his arrest by the Winslow Township Police Department which led to the proffer of his resignation.

The Appellant filed an appeal with the Civil Service Commission pursuant to N.J.A.C. 4A:2-6.1(d), asserting that his resignation was the result of duress and coercion. On July 8, 2009, the Civil Service Commission transmitted the Appellant's case to the Office of Administrative Law for a hearing as a contested case pursuant to N.J.S.A. 52:14B-1 to -15 and N.J.S.A. 52:14F-1 to -13. On October 26, 2009, the Public Employment Relations Commission and on November 5, 2009, the Civil Service Commission, granted an Order of Consolidation and Predominant

Interest. A joint order was entered by the Commissioner of the Department of Personnel and the Chairman of the Public Employment Relations Commission consolidating these matters before PERC. During the course of this proceeding, the parties engaged in settlement discussions.

The parties have agreed to a settlement and have prepared a settlement agreement indicating the terms thereof, which is attached and fully incorporated herein.

I have reviewed the record and the terms of settlement and **I**

FIND:

1. The parties have voluntarily agreed to the settlement as evidenced by their signatures or their representatives' signatures.

2. The settlement fully disposes of all issues and controversy and is consistent with the law.

I CONCLUDE that this settlement agreement meets the requirements of N.J.A.C. 1:1-19.1 and that the settlement should be approved. I approve the settlement and therefore **order** that the parties comply with the settlement terms and that these proceedings be concluded.

I hereby **FILE** my initial decision with the **CIVIL SERVICE COMMISSION** and the **PUBLIC EMPLOYMENT RELATIONS COMMISSION** for consideration.

This recommended decision may be adopted, modified or rejected by the **CIVIL SERVICE COMMISSION** and the **PUBLIC EMPLOYMENT RELATIONS COMMISSION**, which by law is authorized to make a final decision in this matter. If the Merit System Board and the Public Employment Relations Commission do not adopt, modify or reject this decision within forty-five days and unless such time limit is otherwise extended, this recommended decision shall become a final decision in accordance with N.J.S.A. 52:14B-10.

November 23, 2010
DATE

/s/
Stuart Reichman, ALJ, t/a