

P.E.R.C. NO. 92-46

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

JOSEPH LINK

Petitioner,

-and-

OAL DKT. NOS. CSV 8899-86
1298-87, 2652-87 & 5005-88
(CONSOLIDATED)

SOUTHERN STATE CORRECTIONAL
FACILITY

Respondent.

-AND-

COMMUNICATIONS WORKERS OF
AMERICA, AFL-CIO,

Charging Party,

-and-

P.E.R.C. DKT. NO. CO-86-360-8

STATE OF NEW JERSEY,

Respondent.

SYNOPSIS

The Public Employment Relations Commission dismisses a Complaint based on an unfair practice charge filed by the Communications Workers of America against the State of New Jersey. The charge alleges that Joseph Link's employer denied him certain appointments, reassigned him, reprimanded him, and rated him adversely in retaliation for his reporting a violation of statutory residency requirements. The Commission finds that the New Jersey Employer-Employee Relations Act has not been violated.

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Appearances:

For the Charging Party, Steven P. Weissman, Esq.

For the Respondent, Robert J. Del Tufo, Attorney General
(Leslie F. Schwartz, Deputy Attorney General)

DECISION AND ORDER

This case involves Merit System Board ("MSB") appeals filed by Joseph Link, an assistant social work supervisor at Southern State Correctional Facility in the Department of Corrections, and an unfair practice charge filed by the Communications Workers of America, Link's majority representative. The appeals and charge allege that Link's employer denied him certain appointments, reassigned him, reprimanded him, and rated him adversely in

retaliation for his reporting a violation of statutory residency requirements. The unfair practice charge specifically alleges that the employer violated subsections 5.4(a)(1), (3), and (5) of the New Jersey Employer-Employee Relations Act, N.J.S.A. 34:13A-1 et seq.^{1/} The appeals and charge were consolidated for hearing before an Administrative Law Judge ("ALJ") and the MSB was found to have the predominant interest under N.J.A.C. 1:1-17.5.

On November 8, 1990, the ALJ recommended that the MSB and the Commission deny Link all relief. He sent his initial decision to the parties, the MSB, and -- erroneously -- the Public Employment Relations Commission Appeal Board. The Appeal Board's jurisdiction is limited to considering representation fee appeals under N.J.S.A. 34:13A-5.6. Exceptions and cross-exceptions were filed with the MSB, but not the Commission.

On February 27, 1991, the MSB remanded the case. Concluding that Link had made out a prima facie case that several personnel actions were motivated by hostility towards whistleblowing

^{1/} These subsections prohibit public employers, their representatives or agents from: "(1) Interfering with, restraining or coercing employees in the exercise of the rights guaranteed to them by this act. (3) Discriminating in regard to hire or tenure of employment or any term or condition of employment to encourage or discourage employees in the exercise of the rights guaranteed to them by this act. (5) Refusing to negotiate in good faith with a majority representative of employees in an appropriate unit concerning terms and conditions of employment of employees in that unit, or refusing to process grievances presented by the majority representative."

protected by N.J.S.A. 11A:2-24, the MSB directed the ALJ to apply In re Bridgewater Tp., 95 N.J. 235 (1984), and determine whether these actions would have been taken absent Link's protected conduct.

On June 24, 1991, the ALJ issued his decision on remand. He again recommended denying the MSB appeals. With respect to the unfair practice charge, he concluded that the Commission had adopted his first decision by not reviewing it within 45 days. N.J.S.A. 52:14B-10(c). Exceptions were filed with the MSB, but not the Commission.

On September 23, 1991, the MSB issued its final decision denying the MSB appeals. The MSB then transferred the file to us and secured an extension of time for us to consider this case.^{2/}

We accept the facts found by the MSB. Given those facts, we agree with the ALJ that our Act has not been violated. We therefore dismiss the Complaint.

^{2/} We reject the ALJ's conclusion that his original decision must be deemed adopted insofar as the unfair practice charge is concerned. Any action by us after that decision would have been premature. The MSB had the predominant interest and thus the duty to consider this case first. Discharging that duty, it remanded the case. At that point, the case had not reached the Commission and there was nothing for the Commission to do but await the decision on remand and the MSB's subsequent decision establishing the facts. We cannot render conclusions of law without the facts having first been found by the agency with the predominant interest.

ORDER

The Complaint is dismissed.

BY ORDER OF THE COMMISSION



James W. Mastriani
Chairman

Chairman Mastriani, Commissioners Bertolino, Goetting, Grandrimo, Regan, Smith and Wenzler voted in favor of this decision. None opposed.

DATED: October 17, 1991
Trenton, New Jersey
ISSUED: October 18, 1991