

STATE OF NEW JERSEY
MERIT SYSTEM BOARD
AND
PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

COMMUNICATIONS WORKERS OF
AMERICA, AFL-CIO

Charging Party,

v.

STATE OF NEW JERSEY
(DEPARTMENT OF HUMAN SERVICES),

Respondent.

DEBRA COLE-GRANGER,

Appellant,

v.

DEPARTMENT OF HUMAN SERVICES,
DIVISION OF YOUTH AND FAMILY
SERVICES,

Respondent.

DEBRA COLE-GRANGER,

Appellant,

v.

DEPARTMENT OF HUMAN SERVICES,
DIVISION OF YOUTH AND FAMILY
SERVICES,

Respondent.

JOINT ORDER
ON CONSOLIDATION AND
PREDOMINANT INTEREST

PERC Docket No. CO-H-94-3

OAL DOCKET NO. CSV-5027-94

OAL Docket No. CSV-7140-94

SYNOPSIS

The Merit System Board and the Public Employment Relations Commission issue a Joint Decision and Order consolidating two appeals filed with the Merit System Board and an unfair practice charge filed with the Public Employment Relations Commission for a hearing before an Administrative Law Judge. The appeals and the charge involve the suspension and termination of a family service specialist and arise from a common nucleus of facts. The joint order directs the Administrative Law Judge to forward the initial report and record to the Commission to determine whether the employee engaged in activity protected under the New Jersey Employer-Employee Relations Act and whether that activity, if protected, was a substantial or motivating factor in the suspension and termination; the Commission will then transmit its decision and the record to the Merit System Board to determine whether the suspension and termination were for legitimate business reasons and were otherwise warranted under Merit System law; and, if appropriate, the matter will then be returned to the Commission for its consideration of whether specialized relief is warranted under its Act.

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Appearances:

For the Appellant-Charging Party, Weissman & Mintz,
attorneys (Steven P. Weissman, of counsel)

For the Respondent, Deborah T. Poritz, Attorney General
(Meredith G. Van Pelt, Deputy Attorney General)

JOINT DECISION AND ORDER

Debra Cole-Granger was suspended and then terminated from her position as a family service specialist in the State of New Jersey's Department of Human Services, Division of Youth and Family Services. She was charged with insubordination, intentional disobedience, refusal to accept a reasonable order, assaulting her supervisor, and fighting on State property. The charges stem from an altercation between Cole-Granger and her supervisor. Cole-Granger appealed her suspension and termination to the Merit System Board and the matter was transmitted to the Office of Administrative Law for determination as a contested case (CSV-5027-94).

In addition, Cole-Granger appealed a denial of Sick Leave Injury benefits to the Merit System Board. This appeal also stems from the altercation between Cole-Granger and her supervisor. This appeal too was transmitted to the Office of Administrative Law for determination as a contested case (CSV-7140-94).

In addition, Cole-Granger's majority representative, the Communications Workers of America, AFL-CIO filed an unfair practice charge with the Public Employment Relations Commission. The charge alleges that Cole-Granger was illegally suspended and then fired in

retaliation for her efforts as a CWA shop steward to investigate a disciplinary action against a co-worker. An amendment to the charge specifically alleges that Cole-Granger's supervisor provoked her into a fight and that the employer fired Cole-Granger after that fight because she was a CWA shop steward. A Complaint and Notice of Hearing was issued.

On November, 14, 1994, CWA moved to consolidate the two Merit System Board cases and the one Commission case for hearing. It also asked that no predominant interest determination be made and that the consolidated cases be heard by a Commission Hearing Examiner.

On August 10, 1995, Administrative Law Judge Marie P. Simonelli issued an order consolidating the two Merit System Board cases, but not the Commission case as well. The judge gave no reasons for this order.

CWA has filed exceptions reasserting its positions before the Administrative Law Judge. It asserts that all three cases arise out of the same nucleus of facts, especially the altercation between Cole-Granger and her supervisor, and that they all involve an essential identity of parties and related issues of law. CWA also argues that the case should be heard by a Hearing Examiner and that after a report issues the case should be first be considered by the Commission and then by the Merit System Board. The employer's response supports the Administrative Law Judge's order and opposes having a Commission Hearing Examiner hear the consolidated case.

Having independently evaluated the record and considered the Administrative Law Judge's order, the Merit System Board at its meeting on September 19, 1995 and the Chairman of the Public Employment Relations Commission, acting pursuant to authority delegated to him by the full Commission, on September 15, 1995 agree that in the instant matters, consolidation of the Merit System Board and Commission cases serves the purposes of avoidance of duplication, prevention of needless litigation, and reduction of conflict between administrative agencies. See Hackensack v. Winner, 82 N.J. 1 (1980); N.J.A.C. 1:1-17.1 et seq. Accordingly, the following determination is made:

ORDER

The above-captioned matters are consolidated for hearing before an Administrative Law Judge. The Administrative Law Judge will offer recommended findings of fact and conclusions of law to both the Public Employment Relations Commission and the Merit System Board, 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 Commission to determine whether Cole-Granger engaged in activity protected under the New Jersey Employer-Employee Relations Act and whether that activity, if protected, was a substantial or motivating factor in her suspension and termination; and

The Commission's decision and the complete record will then be sent to the Merit System Board which will then determine whether Cole-Granger's suspension and termination were for legitimate business reasons and were otherwise warranted under Merit System law; and

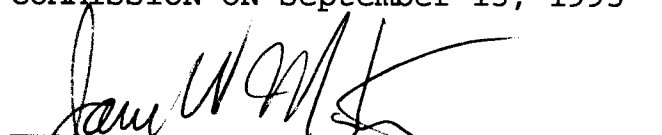
Where appropriate, the matter will be returned to the Commission for its consideration of whether specialized relief is warranted under its Act.

DECISION RENDERED BY THE
MERIT SYSTEM BOARD ON
September 19, 1995



Linda M. Anselmini
Commissioner

DECISION RENDERED BY THE CHAIRMAN
OF THE PUBLIC EMPLOYMENT RELATIONS
COMMISSION ON September 15, 1995



James W. Mastriani
Chairman