

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

In the Matter of

CITY OF GLOUCESTER CITY,	:	
Respondent,	:	JOINT ORDER
and	:	ON CONSOLIDATION AND
COMMUNICATIONS WORKERS	:	PREDOMINANT INTEREST
OF AMERICA, AFL-CIO,	:	
Charging Party.	:	PERC Docket No. CO-H-95-136
_____	:	
LINDA VIERECK,	:	
Appellant,	:	
v.	:	OAL DOCKET NO. CSV-01507-95
CITY OF GLOUCESTER CITY,	:	
Respondent.	:	
_____	:	

SYNOPSIS

The Chairman of the Public Employment Relations Commission, in a joint order with the Commissioner of Personnel, finds that an unfair practice charge filed by the Communications Workers of America against the City of Gloucester City should be consolidated with an appeal to the Merit System Board filed by Linda Viereck against the City. The Administrative Law Judge will first offer recommended findings of fact and conclusions of law to both the 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). Upon transmittal of the initial decision to both agencies, the underlying record will be forwarded to the Commission to determine whether the City violated the New Jersey Employer-Employee Relations Act by removing Viereck from CWA's negotiations unit and by denying her representation at a disciplinary hearing and to determine what remedies are appropriate for any violations of that statute. The Commission will also determine whether Viereck engaged in protected activity under the Act and whether that activity, if protected, was a substantial or motivating factor in her termination.

The Commission's decision and the complete record will then be sent to the Merit System Board which will then determine whether Viereck was improperly denied a leave of absence under the Family Medical Leave Act and whether her termination was for legitimate business reasons and was otherwise warranted under the Merit System law. Where appropriate, the matter will be returned to the Commission for its consideration of whether specialized relief is warranted under its Act.

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

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v.	:	
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CITY OF GLOUCESTER CITY,	:	OAL DOCKET NO. CSV-01507-95
	:	
Respondent.	:	
_____	:	

Appearances:

For the Appellant-Charging Party, Weissman & Mintz,
attorneys (Judiann Chartier, of counsel)

For the Respondent, Maley, Williamson, Hayden & Gmerek,
attorneys (M. James Maley, Jr., of counsel)

JOINT DECISION AND ORDER

Linda Viereck was terminated from her position as a clerk/typist employed by the City of Gloucester City. Viereck served as the City Administrator's secretary. Viereck was charged with chronic absenteeism and terminated after a disciplinary hearing. She alleges that after a car accident and after she had exhausted

her paid sick time and accrued vacation leave, she was improperly denied an unpaid leave of absence under the federal Family Medical Leave Act, 29 U.S.C. 2601 et seq.. Viereck appealed her termination to the Merit System Board and the matter was transmitted to the Office of Administrative Law for determination as a contested case.

In addition, the Communications Workers of America, AFL-CIO, the majority representative of the City's secretaries, filed an unfair practice charge and amended charge with the Public Employment Relations Commission. The charge, as amended, alleges that Viereck was illegally disciplined in retaliation for her request to remain in CWA's negotiations unit; the City improperly removed her from the negotiations unit; and the City illegally denied her CWA's representation at that disciplinary hearing.

Viereck and CWA moved to have her Merit System Board appeal and her unfair practice charge consolidated and to have the consolidated case heard by an Administrative Law Judge. They have also asked that the Administrative Law Judge's decision first be reviewed by the Commission to determine whether the employer's actions violated the New Jersey Employer-Employee Relations Act, N.J.S.A. 34:13A-1 et seq., and to determine what remedies are appropriate for any violations of that statute and then be reviewed by the Merit System Board to determine whether disciplinary charges should be sustained under the Civil Service Act, N.J.S.A. 11A:1 et

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seq., and to determine what remedies are appropriate for any violations of that statute. The City did not oppose consolidation.

On October 5, 1995, Administrative Law Judge Bruce R. Campbell issued an order consolidating the appeal and charge for hearing before an Administrative Law Judge. The order also directed that the Commission would first review the Administrative Law Judge's decision to determine whether the employer's actions had violated the New Jersey Employer-Employee Relations Act and to determine what remedies are appropriate under that statute and that the decision would then be forwarded to the Merit System Board to determine whether Viereck's termination violated the Civil Service Act and to determine what remedies are appropriate under that statute. No exceptions were filed.

Having independently evaluated the record and considered the Administrative Law Judge's order, the Merit System Board at its meeting on November 1, 1995 and the Chairman of the Public Employment Relations Commission, acting pursuant to authority delegated to him by the full Commission, on October 24, 1995 agree that consolidation of the Merit System Board and Commission cases will avoid duplication, prevent needless litigation, and reduce conflict between 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 the City of Gloucester City violated the New Jersey Employer-Employee Relations Act by removing Linda Viereck from the negotiations unit represented by the Communications Workers of America, AFL-CIO and by denying her CWA's representation at a disciplinary hearing and to determine what remedies are appropriate from any violations of that statute. The Commission will also determine whether Viereck engaged in activity protected under the Act and whether that activity, if protected, was a substantial or motivating factor in her termination.

The Commission's decision and the complete record will then be sent to the Merit System Board which will then determine whether Viereck was improperly denied a leave of absence under the Family Medical Leave Act and whether her termination was for legitimate business reasons and was otherwise warranted under Merit System law.

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

November 1, 1995

Linda M. Anselmini

Linda M. Anselmini
Commissioner

DECISION RENDERED BY THE CHAIRMAN
OF THE PUBLIC EMPLOYMENT RELATIONS
COMMISSION ON October 24, 1995

James W. Mastriani

James W. Mastriani
Chairman