# STATE OF NEW JERSEY MERIT SYSTEM BOARD AND

# PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

SAMUEL JOHNSON,

Appellant, : JOINT ORDER

v. PREDOMINANT INTEREST

STATE OF NEW JERSEY, DEPARTMENT

OF HUMAN SERVICES,

OAL Docket No. CSV 03796-92

ON CONSOLIDATION AND

Respondent.

STATE OF NEW JERSEY (HUNTERDON DEVELOPMENTAL CENTER),

Respondent,

-and- : PERC Docket No. CO-H-93-88

IFPTE, LOCAL 195,

Charging Party.

# SYNOPSIS

The Chairman of the Public Employment Relations Commission and the Merit System Board, in a joint order, consolidate an appeal to the Board and an unfair practice charge filed by Samuel Johnson and IFPTE, Local 195, respectively, against the State of New Jersey. The consolidated matter will be heard before the Office of Administrative Law. The Commission will make the initial decision whether Johnson 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 his termination. The Merit System Board will then determine whether his removal was for legitimate business reasons and was otherwise warranted under merit system law. If it is found that the removal was not for legitimate business reasons, the matter will be returned to the Commission for its consideration of specialized remedial relief under the Act.

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# Appearances:

For the State of New Jersey, Robert J. DelTufo, Attorney General (Stephan M. Schwartz, Deputy Attorney General; Sean Dias, Deputy Attorney General)

For the Appellant-Charging Party, Balk, Oxfeld, Mandell & Cohen, attorneys (Arnold S. Cohen, of counsel)

Samuel Johnson was terminated from his position at the Hunterdon Developmental Center on grounds of insubordination, assaulting authority, and using insulting and abusive language to a

supervisor. Mr. Johnson requested a hearing before the Merit System Board and the matter was transmitted to the Office of Administrative Law for determination as a contested case. In addition, IFPTE, Local 195 filed an unfair practice charge with the Public Employment Relations Commission alleging that the charges were fabricated so that Johnson would refrain from filing grievances.

Administrative Law Judge Joseph Lavery issued an order consolidating these matters and designating the Merit System Board as having the predominant interest. The matter would first be considered by the Board and then by the Commission.

Having considered the record and the Administrative Law Judge's order, and having made an independent evaluation of the record, the Merit System Board at its meeting on March 33, 1993 and the Chairman of the Public Employment Relations Commission, acting pursuant to authority granted to him by the full Commission, on March 18, 1993, made the following determination in this matter.

# ORDER

The Merit System Board and the Public Employment Relations Commission have agreed to the following procedures, and it is;

FURTHER ORDERED that the above matters be consolidated for hearing before the Office of Administrative Law; and it is

FURTHER ORDERED that the Commission will make the initial decision whether Johnson 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 his termination; and it is

FURTHER ORDERED that the Merit System Board will then determine whether his removal was for legitimate business reasons and was otherwise warranted under merit system law; and it is

FURTHER ORDERED that in the event it is found that the removal was not for legitimate business reasons, the matter will then be returned to the Commission for its consideration of specialized remedial relief under its Act.

DECISION RENDERED BY THE MERIT SYSTEM BOARD ON

MARCH 23, 1993

Anthony Omino Commissioner

DATED: Trenton, New Jersey

March 23, 1993

DECISION RENDERED BY THE CHAIRMAN OF THE PUBLIC EMPLOYMENT RELATIONS COMMISSION ON MARCH, 18—1993

James W. Mastriani

Chairman

DATED: Trenton, New Jersey

March 18, 1993