

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

In the Matters of

STATE OF NEW JERSEY,  
DEPARTMENT OF COMMUNITY AFFAIRS,

Respondent,

-and-

MAXIMO NINAL,

Appellant.

JOINT ORDER  
ON CONSOLIDATION AND  
PREDOMINANT INTEREST

DOP Docket No. 2002-622  
OAL Docket No. CSV 9344-01

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STATE OF NEW JERSEY  
(DEPARTMENT OF COMMUNITY AFFAIRS),

Respondent,

-and-

MAXIMO NINAL,

Charging Party.

Docket No. CI-H-2002-15

SYNOPSIS

The Chair of the Public Employment Relations Commission and the Merit System Board entered a joint order consolidating an unfair practice charge filed with the Commission and a disciplinary appeal filed with the Merit System Board. The consolidated case will be heard by an Administrative Law Judge. The Judge's Initial Decision and the record will be forwarded to the Commission first to determine whether Ninal engaged in activity protected by the New Jersey Employer-Employee Relations Act and whether that activity, if protected, was a substantial or motivating factor in his termination. The case will then be transferred to the Merit System Board to determine whether the termination was for legitimate business reasons and whether it was otherwise warranted under Merit System law. If necessary, the case will then be returned to the Commission for its consideration of whether specialized relief is warranted under the Act.

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, David Samson, Attorney General (Karen Griffen and Melissa Resnick, Deputy Attorneys General)

For the Charging Party, Robert H. Jaffee & Associates, P.A., attorneys (Robert H. Jaffe, of counsel)

JOINT DECISION

Maximo Ninal filed an appeal with the Merit System Board from the determination of the State of New Jersey, Department of Community Affairs to terminate his employment. Ninal also filed

an unfair practice charge with the Public Employment Relations Commission. The appeal was transmitted to the Office of Administrative Law and a Complaint on the unfair practice charge was issued.

The respondent filed a notice of motion for Consolidation and Predominant Interest Determination. The appellant/charging party does not oppose consolidation.

On November 27, 2002, Administrative Law Judge Robert J. Giordano issued a decision and order consolidating the cases before the ALJ and determining that the Board should have the predominant interest.

Having independently evaluated the record and considered the ALJ's Order, the Board, at its meeting on January 15, 2003 and the Chair of the Public Employment Relations Commission, acting pursuant to authority delegated to her by the full Commission, on December 13, 2002 determined that the two cases should be consolidated and decided consistent with our approach in similar cases. See, e.g., State of New Jersey (Dept. of Treasury), P.E.R.C. No. 2002-25, 28 NJPER 45 (133012 2001).

#### JOINT ORDER

The Merit System Board appeal and the Public Employment Relations Commission Complaint are consolidated for hearing before the Administrative Law Judge. The ALJ will first 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.A.C. 1:1-18.3 and consistent with N.J.A.C. 1:1-17.8(a); and

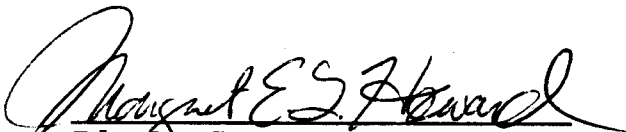
Upon transmittal of the initial decision to both agencies, the underlying record will be forwarded to the Commission to determine whether Ninal engaged in activity protected under the New Jersey Employer-Employee Relations Act and whether that activity, if protected, was a substantial or motivating factor in the termination; and

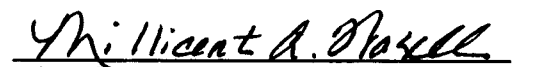
The Commission's decision and the complete record will then be sent to the Merit System Board which will then determine whether the disciplinary action was for legitimate business reasons and was otherwise warranted under Civil Service laws; and

If 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  
January 15, 2003

DECISION RENDERED BY THE CHAIR  
OF THE PUBLIC EMPLOYMENT  
RELATIONS COMMISSION ON  
DECEMBER 13, 2002

  
~~Ida L. Castro~~  
~~Commissioner~~  
~~Department of Personnel~~  
Margaret E.L. Howard  
Presiding Board Member

  
Millicent A. Wasell  
Chair  
Public Employment Relations  
Commission