

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

DAVID SALVATORE,

Appellant,

v.

OAL Docket No. CSV 11387-03

Agency Docket No. 2004-865

DEPARTMENT OF THE TREASURY,

Respondent.

STATE OF NEW JERSEY (TREASURY,
DIVISION OF THE STATE LOTTERY),

Respondent,

-and-

PERC Docket No. CO-2003-212

COMMUNICATIONS WORKERS OF
AMERICA, AFL-CIO,

Charging Party.

SYNOPSIS

The Merit System Board and the Chairman of the New Jersey Public Employment Relations Commission issue a Joint Order consolidating an appeal before the Board and an unfair practice charge before the Commission for hearing before an Administrative Law Judge. The appeal and the charge both contest the employer's suspension of David Salvatore, an employee in the State Lottery Division of the Department of Treasury. After the ALJ issues a decision, the Commission will determine whether the suspension violated the New Jersey Employer-Employee Relations Act and, if so, what the appropriate remedy shall be. The matter will then be transferred to the Board to determine whether the disciplinary charges should be sustained.

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.

P.E.R.C. NO. 2006-9

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Appearances:

For the Charging Party/Appellant, Weissman & Mintz,
attorneys (Rosemarie Cipparulo, on the motion)

For the Respondent/Respondent, Peter C. Harvey,
Attorney General of New Jersey, attorney (Karen Selby,
Deputy Attorney General)

DECISION

David Salvatore is employed as a Sales Representative within the New Jersey Department of the Treasury, Division of the State Lottery. He is represented by the Communications Workers of America, AFL-CIO. His employer has suspended him for 60 days.

Salvatore has appealed his suspension to the Merit System Board and has alleged that his employer did not have cause to suspend him. CWA has filed an unfair practice charge alleging that Salvatore was suspended in retaliation for filing grievances. The appeal was transmitted to the Office of Administrative Law and a Complaint on the unfair practice charge was issued.

CWA filed a motion with the Office of Administrative Law requesting that the appeal and charge be consolidated for hearing before an Administrative Law Judge ("ALJ"). Its motion also sought a predominant interest determination.

On January 14, 2005, ALJ Maria Mancini LaFiandra issued an order consolidating the appeal and charge for hearing before an ALJ and the issuance of recommended findings of fact and conclusions of law. She also ordered that the ALJ's decision be reviewed initially by the Commission to determine whether the suspension violated the Employer-Employee Relations Act, N.J.S.A. 34:13A-1 et seq., and what remedy would be appropriate if a violation was found and that the matter then be transferred to the Merit System Board to determine whether the disciplinary charges should be sustained. The ALJ's order was served on the parties, but not mailed to the Commission until June 2, 2005 and apparently not mailed to the Merit System Board at all. Neither party filed exceptions to the order.

While the ALJ did not present any analysis in making her recommendation regarding predominant interest as required under N.J.A.C. 1:1-17.3, both agencies have independently evaluated the record and considered the ALJ's order. Accordingly, the Board, at its meeting on July 13, 2005, and the Chairman of the Public Employment Relations Commission, acting pursuant to authority delegated him by the full Commission, on June 20, 2005, determined that the appeal should be consolidated and decided consistent with the order entered by the ALJ and not excepted to by either party.

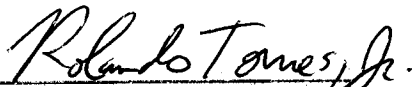
JOINT ORDER


The appeal before the Merit System Board and the unfair practice charge before the Public Employment Relations Commission 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 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 suspension violated the New Jersey Employer-Employee Relations Act and, if so, what the appropriate remedy should be; and the

matter will then be transferred to the Merit System Board to determine whether the disciplinary charges should be sustained.

DECISION RENDERED BY THE
MERIT SYSTEM BOARD ON
July 13, 2005

DECISION RENDERED BY THE CHAIRMAN
OF THE PUBLIC EMPLOYMENT RELATIONS
COMMISSION ON JUNE 20, 2005


Rolando Torres, Jr.
Rolando Torres, Jr.
Commissioner
Merit System Board


Lawrence Henderson
Lawrence Henderson
Chairman
Public Employment Relations Commission