

STATE OF NEW JERSEY  
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION  
AND  
CIVIL SERVICE COMMISSION

In the Matter of

COUNTY OF HUDSON,

Respondent,

-and-

Docket No. CO-2009-039

DISTRICT 1199J,  
NATIONAL UNION OF HOSPITAL AND  
HEALTH CARE EMPLOYEES,  
AFSCME, AFL-CIO,

Charging Party.

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COUNTY OF HUDSON,

Respondent,

-and-

OAL Docket Nos. CSV 05830-08  
CSV 05501-09  
CSV 03610-10

ANTHONY MORELLI,

Appellant.

CSC Docket Nos. 2008-3657  
2009-2214  
2010-2775

SYNOPSIS

The Chair of the New Jersey Public Employment Relations Commission and the Chair of the Civil Service Commission issue a joint order consolidating an appeal before Civil Service and an unfair practice charge before PERC for hearing before an Administrative Law Judge. The appeal and the charge both allege that a union delegate was disciplined in retaliation for protected activity. After the ALJ issues a decision to both agencies, PERC will determine whether the employee engaged in activity protected under the New Jersey Employer-Employee Relations Act, N.J.S.A. 34:13A-1 et seq., and whether the activity, if protected was a substantial or motivating factor in the discipline; the CSC will then determine whether the disciplinary action was for a legitimate business reason and was otherwise warranted under the Civil Service laws; and if appropriate the matter will be returned

to PERC for consideration of whether specialized relief is warranted under its 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, Scarinci & Hollenbeck, attorneys  
(Sean Dias, of counsel in CO-2009-039)

For the Respondent, John A. Smith, III, Assistant  
County Counsel in CSV 05830-08, CSV 05501-09 and CSV  
03610-10

For the Appellant and Charging Party, Oxfeld Cohen,  
P.C., attorneys (Benjamin A. Spivack, of counsel)

DECISION

On July 7, 2008, District 1199J, National Union of Hospital  
and Health Care Employees, AFSCME, AFL-CIO filed an unfair  
practice charge against the County of Hudson. The charge alleges

that the County violated the New Jersey Employer-Employee Relations Act, N.J.S.A. 34:13A-5.4a(1), (2), (3) and (4),<sup>1/</sup> when it disciplined Anthony Morelli in retaliation for his filing complaints and grievances concerning alleged violations of the collective negotiations agreement. On February 23, 2009, a Complaint and Notice of Hearing issued on the N.J.S.A. 34:13A-5.4a(1) and (3) allegations only.<sup>2/</sup>

Morelli is employed as a truck driver by the Hudson County Department of Parks and also serves as a union delegate to District 1199J. On March 14, 2008, he was suspended for the first time for 30 days based on charges of insubordination, conduct unbecoming a County employee, and neglect of duty. The charges stemmed from a January 31, 2008 incident in which the County alleged that Morelli refused a direct order to report to the Lincoln Park Administration Building to discuss personnel

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<sup>1/</sup> These provisions prohibit public employers, their representatives or agents from: "(1) Interfering with, restraining or coercing employees in the exercise of the rights guaranteed to them by this act. (2) Dominating or interfering with the formation, existence or administration of any employee organization. (3) Discriminating in regard to hire or tenure of employment or any term or condition of employment to encourage or discourage employees in the exercise of the rights guaranteed to them by this act. (4) Discharging or otherwise discriminating against any employee because he has signed or filed an affidavit, petition or complaint or given any information or testimony under this act."

<sup>2/</sup> On November 1, 2010, District 1199J filed an amended unfair practice charge with the Public Employment Relations Commission. The Commission accepts that amendment.

matters with management. District 1199J contends that the meeting was called because management became aware that Morelli had advised the union of a job classification issue. District 1199J also asserts that a miscommunication was a large factor in Morelli's not attending the meeting.

On November 13, 2008, Morelli was suspended for a second time for 90 days based on charges of insubordination and neglect of duty. The charges stemmed from the County's assertion that he refused a direct order to go to work seven times. District 1199J asserts that his suspension was based solely on his activities as a union delegate posting the union's rights on a union bulletin board and discussing the posting with a management representative. Also on November 13, 2008, Morelli was suspended for a third time for 60 days based on charges of conduct unbecoming a County employee and insubordination. The charges stemmed from a complaint by two employees that he was taking pictures of them without permission and harassing them. District 1199J asserts that the taking of such pictures was a protected activity as its purpose was to expose a dangerous on-the-job situation that Morelli had previously reported to his supervisors. Furthermore, District 1199J asserts that the taking of such pictures is a common practice in the County park where

Morelli is employed.<sup>3/</sup> A fourth suspension for 120 days was entered against Morelli. The fourth suspension was based on charges of insubordination, conduct unbecoming a County employee, and neglect of duty stemming from an incident in which the County alleged that Morelli falsified an official County document and disobeyed a direct order from a supervisor.<sup>4/</sup>

Morelli appealed the suspensions to the Civil Service Commission, which transmitted the matters to the Office of Administrative Law as contested cases. On April 4, 2010, the attorney for both Morelli and District 1199J filed a motion to consolidate the disciplinary appeals with the unfair practice case pending before the Public Employment Relations Commission. The attorney contends that the ALJ should make findings of fact and conclusions of law because Morelli's defenses include but go beyond the argument that his disciplines were implemented for anti-union animus. The attorney further asserts that the predominant interest should lie with the Civil Service Commission. The County asserts that the standards for consolidation under N.J.A.C. 1:1-17.3 are not met because the identities of the parties are not the same since Morelli is the appellant in the disciplinary appeals but District 1199J is the

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<sup>3/</sup> The 30 day suspension bears OAL Docket No. CSV 05830-08 and the 60 and 90 day suspensions bear OAL Docket No. CSV 05501-09.

<sup>4/</sup> The 120 day suspension bears OAL Docket No. CSV 03610-10.

charging party in the unfair practice matter.<sup>5/</sup> The County also objects to consolidation and contends that PERC possesses the expertise to adjudicate the unfair practice charge and should be charged with making factual findings and conclusions of law on that matter.

On October 4, 2010, Administrative Law Judge Mumtaz Bari-Brown issued an Order finding that the Civil Service appeals and the unfair practice charge should be consolidated. In finding that consolidation was appropriate, the ALJ made the following findings:

The identity and the underlying issue in the separate matters revolve around the conduct of Anthony Morelli. Did his conduct support the disciplinary charges imposed by the Appointing Authority? This issue is before the Civil Service Commission. Morelli defends his conduct under protected activity and as such, claims that he cannot be disciplined for the actions. Whereas the issue before PERC is whether Hudson County is guilty of anti-Union animus and retaliation against Morelli because he participated in union activities?

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I am persuaded that the issues are not severable and presentation by the parties in a single hearing would not result in confusion or unreasonable delay.<sup>6/</sup>

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<sup>5/</sup> PERC was not copied on the County's response and relies on the ALJ's summary in her October 4, 2010 Decision.

<sup>6/</sup> Neither the Public Employment Relations Commission or the Civil Service Commission were included on the service list  
(continued...)

The ALJ further determined that the Civil Service Commission had the predominant interest.

Since both the disciplinary appeals and the unfair practice case revolve around Morelli's conduct, we agree with the ALJ that consolidation is appropriate to provide for a single hearing before the ALJ to make initial findings of fact and conclusions of law. However, we have modified the ALJ's Order to ensure that the Public Employment Relations Commission has the initial review of the findings of fact and conclusions of law with regard to the charges made in the unfair practice charge. Thus, having independently reviewed the record and considered the ALJ's Order, the Civil Service Commission and the Commission designee of the Public Employment Relations Commission, acting pursuant to authority delegated to her by the full Commission, made the following determination in this matter.

JOINT ORDER

The unfair practice charge is consolidated for hearing with the disciplinary appeals before the Administrative Law Judge. The Administrative Law Judge will first offer recommended findings of fact and conclusions of law to both the Public Employment Relations Commission and the Civil Service Commission disposing of all issues in controversy through a single Initial

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6/ (...continued)  
for ALJ Bari-Brown's October 4, 2010 Order. We are unaware of any exceptions that have been filed by the parties.



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 Public Employment Relations Commission to determine whether hostility to protected activity was a substantial or motivating factor in the decision to discipline Morelli; and


Upon issuance of the Public Employment Relations Commission decision, the complete record will then be sent to the Civil Service Commission which will then determine whether the discipline was for legitimate reasons and was otherwise warranted under Civil Service law; and

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

DECISION RENDERED BY THE  
CIVIL SERVICE COMMISSION  
ON JANUARY 19, 2011

  
Robert M. Czech, Chairperson  
Civil Service Commission

DECISION RENDERED BY THE  
PUBLIC EMPLOYMENT RELATIONS  
COMMISSION ON DECEMBER 29, 2010

  
P. Kelly Hatfield, Chair  
Public Employment Relations Commission