

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

In the Matters of

ROBERT RUFFIN,

Appellant,

-and-

OAL Docket No. CSV 13378-10
Agency Docket No. 2011-1702

DEPARTMENT OF HUMAN SERVICES,
ANCORA PSYCHIATRIC HOSPITAL,

Respondent.

AFSCME COUNCIL 71, LOCAL 2218,

Charging Party,

Docket No. CO-2011-221

-and-

STATE OF NEW JERSEY
ANCORA PSYCHIATRIC HOSPITAL,

Respondent.

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 president was suspended 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 suspension; 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.

P.E.R.C. NO. 2012-28

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Appearances:

For the Respondent, Walter Miziuk, Employee Relations Officer and Paula T. Dow, Attorney General (Sally Ann Fields, Senior Deputy Attorney General, of counsel)

For the Appellant/Charging Party Geoffrey B. Gompers & Associates, attorneys (Geoffrey B. Gompers, of counsel)

DECISION

Robert Ruffin filed an appeal with the Civil Service Commission of a determination by the State of New Jersey Department of Human Services Ancora Psychiatric Hospital to

suspend him for 15 days. On December 13, 2010, AFSCME Council 71 Local 2218 filed an unfair practice charge alleging that Ruffin's suspension was in retaliation for his alleged protected activity as union president in violation of the New Jersey Employer-Employee Relations Act. N.J.S.A. 34:13A-5.4 et seq. The Civil Service appeal was transmitted to the Office of Administrative Law and a Complaint on the unfair practice charge was issued.

On March 31, 2011, counsel for Ruffin filed a motion for consolidation and predominant interest determination requesting the judge to order that the Office of Administrative Law has the predominant interest.^{1/} The Respondent supports consolidation, but requests that a determination be made that the Civil Service Commission has the predominant interest in the conduct and outcome of the consolidated matter.

On July 27, 2011, Administrative Law Judge Robert Bingham II issued a decision and order consolidating the cases and determining that since the Public Employment Relations Commission and the Civil Service Commission have concurrent unfair practice jurisdiction, the Civil Service Commission should have the predominant interest. The Public Employment Relations Commission was served with the ALJ's Order on October 31. The Civil Service Commission was served with the Order on November 22.

^{1/} We note that the Office of Administrative Law may not have the predominant interest as it must be one of the State agencies where the cases were filed.

Having independently evaluated the record and considered the Administrative Law Judge's Order, the Civil Service Commission, at its meeting on December 7, 2011 and the Chair of the Public Employment Relations Commission, acting pursuant to authority delegated to her by the full Commission, on November 30, 2011 made the following determination in this matter. The Civil Service Commission and the Public Employment Relations Commission do not share concurrent jurisdiction over unfair practices as defined by the New Jersey Employer-Employee Relations Act. The Public Employment Relations Commission's unfair practice jurisdiction is exclusive. The Public Employment Relations Commission shall have the predominant interest. The Administrative Law Judge's Order is modified as follows:

JOINT ORDER

The Civil Service appeal and the Public Employment Relations Commission Complaint are consolidated for hearing 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 decision under N.J.A.C. 1:1-18.3 and consistent with N.J.A.C. 1:1-17.8(a); and

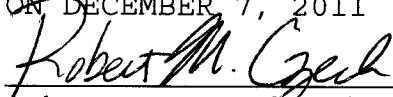
Upon transmittal of the initial decision to both agencies, the underlying record will be forwarded to the Public Employment

Relations Commission to determine whether Ruffin engaged in activity protected under the New Jersey Employer-Employee Relations Act, N.J.S.A. 34:13A-1 et seq., and whether that activity, if protected, was a substantial or motivating factor in the suspension; and

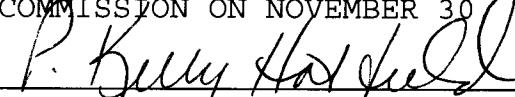
PERC's decision and the complete record will then be sent to the Civil Service Commission to determine whether the disciplinary action was for legitimate business reasons and was otherwise warranted under Civil Service laws; and

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

DECISION RENDERED BY THE
CIVIL SERVICE COMMISSION
ON DECEMBER 7, 2011


Robert M. Czech, Chair
Civil Service Commission

DECISION RENDERED BY THE CHAIR
OF THE PUBLIC EMPLOYMENT RELATIONS
COMMISSION ON NOVEMBER 30, 2011


P. Kelly Hatfield, Chair
Public Employment Relations
Commission