

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

In the Matter of

STATE OF NEW JERSEY,  
DEPARTMENT OF HUMAN SERVICES,

JOINT ORDER

Respondent,

-and-

CSC Docket No. 2012-2888  
OAL Docket No. CSV 4564-12

SEATON SAMUEL,

Appellant.

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STATE OF NEW JERSEY,  
DEPARTMENT OF HUMAN SERVICES,

Respondent,

-and-

Docket No. CO-2012-287

IFPTE, LOCAL 195

Charging Party.

SYNOPSIS

The Chair of the Public Employment Relations Commission and the Civil Service Commission issue a joint order consolidating an unfair practice charge and a disciplinary appeal for hearing before an Administrative Law Judge. The ALJ's initial decision and record will be forwarded to PERC to determine whether the employee engaged in protected activity under the New Jersey Employer-Employee Relations Act and whether that activity, if protected, was a substantial or motivating factor in the termination. The case will then be transferred to the CSC to determine whether the disciplinary action was for legitimate business reasons and was otherwise warranted under Civil Service laws. If appropriate, the matter will be returned to PERC 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.

P.E.R.C. NO. 2013-48

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Appearances:

For the Respondents, Jeffrey S. Chiesa, Attorney  
General (Peter H. Jenkins and Brady Connaughton, Deputy  
Attorneys General)

For the Appellant/Charging Party, Oxfeld Cohen, P.C.,  
attorneys (Arnold Shep Cohen, of counsel)

DECISION

Seaton Samuel filed an appeal with the Civil Service  
Commission (CSC) from a determination of the State of New Jersey,  
Department of Human Services (Greenbrook Regional Center) to

terminate his employment. IFPTE, Local 195 filed an unfair practice charge with the Public Employment Relations Commission (PERC) alleging that Samuel was terminated in violation of the New Jersey Employer-Employee Relations Act, N.J.S.A. 34:13A-1 et seq. The CSC appeal was transmitted to the Office of Administrative Law (OAL) for hearing and a Complaint on the unfair practice charge was issued by the PERC Director of Unfair Practices on the allegations the employer violated N.J.S.A. 34:13A-5.4a(1) and a(3).<sup>1/</sup>

Samuel filed a notice of motion for Consolidation and Predominant Interest Determination. The Respondent does not oppose consolidation.

On October 1, 2012, Administrative Law Judge Edward J. Delanoy (ALJ) issued a decision and order consolidating the cases before the OAL and determining that the CSC should have the predominant interest.

Having independently evaluated the record and considering the ALJ's Order, the CSC at its meeting on November 7, 2012 and the Chair of PERC, acting pursuant to the authority delegated to

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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. . . . [and] (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."

her by the full Commission, on November 5, 2012 determined that the two cases should be consolidated and consistent with our approach in similar cases. PERC's unfair practice jurisdiction is exclusive. PERC shall have the predominant interest and the case should be processed in accordance with the following:

JOINT ORDER

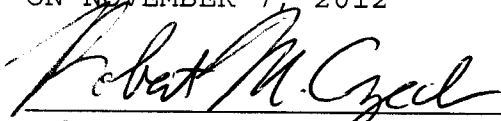
The Civil Service Commission appeal and the Public Employment Relations Commission unfair practice complaint are consolidated for hearing before the ALJ. The ALJ will first offer recommended findings of fact and conclusions of law to both PERC and the CSC disposing of all issues in controversy through a single initial decision under 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 PERC to determine whether Samuel engaged in protected activity under the New Jersey Employer-Employee Relations Act and whether that activity, if protected, was a substantial or motivating factor in the termination; and

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

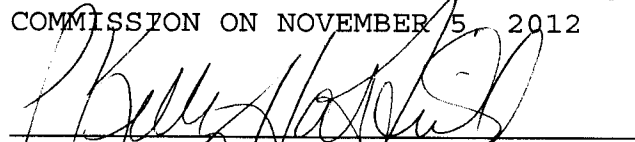
If appropriate, the matter will be returned to PERC for its consideration of whether specialized relief is warranted under its Act.

DECISION RENDERED BY THE  
CIVIL SERVICE COMMISSION  
ON NOVEMBER 7, 2012



Robert M. Czech, Chair  
Civil Service Commission

DECISION RENDERED BY THE CHAIR  
OF THE PUBLIC EMPLOYMENT RELATIONS  
COMMISSION ON NOVEMBER 5, 2012



P. Kelly Hatfield, Chair  
Public Employment Relations  
Commission