

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

In the Matter of

STATE OF NEW JERSEY,
DEPARTMENT OF CORRECTIONS,

JOINT ORDER

Respondent,

-and-

PERC Docket No. CO-2015-042

IFPTE LOCAL 195,

Charging Party,

-and-

MARCIA DAVIS, MOUNTAINVIEW
YOUTH CORRECTIONAL FACILITY,
DEPARTMENT OF CORRECTIONS.

OAL Docket No. CSV 14106-14
Agency Docket No. 2015-788

SYNOPSIS

The Chair of the Public Employment Relations Commission and Chairperson of the Civil Service Commission issue a joint order consolidating for hearing an individual petition before the CSC and an unfair practice charge before PERC filed by the employee's majority representative. PERC's Chair and CSC's Chairperson further hold that the predominant interest lies with PERC.

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, John J. Hoffman, Acting Attorney
General (Nicole M. DeMuro, of counsel)

For the Charging Party, Oxfeld Cohen, attorneys (Arnold
Shep Cohen, of counsel)

DECISION

Appellant Marcia Davis filed an appeal with the Civil Service Commission (CSC) from a determination of the State of New Jersey, Department of Corrections (DOC), to terminate her employment. IFPTE, Local 195 filed an unfair practice charge with the Public Employment Relations Commission (PERC) alleging that Davis 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 that the employer violated N.J.S.A. 34:13A-5.4a(1) and a(3).^v

On March 13, 2015, the DOC filed a motion for Consolidation and Predominant Interest Determination, arguing that the CSC should have the predominant interest. On March 24, the IFPTE filed a brief in support of consolidation, but argued that PERC should have the predominant interest.

Having independently evaluated the record and considering the ALJ's Order, the CSC at its meeting on November 18, 2015 and the Chair of PERC, acting pursuant to the authority delegated her by the full Commission, on November 12, 2015 determined that the two cases should be consolidated 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 Relation Commission unfair practice complaint are

^{1/} 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."

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 Davis 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

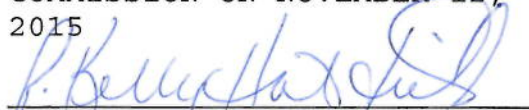
PERC's decision and the complete record will then be sent to the CSC which will then determine whether the disciplinary action was for legitimate business reasons and was otherwise warranted under Civil Service laws; and

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 18,
2015


Robert M. Czech, Chairperson
Civil Service Commission

DECISION RENDERED BY THE
PUBLIC EMPLOYMENT RELATIONS
COMMISSION ON NOVEMBER 12,
2015


P. Kelly Hatfield, Chair
Public Employment Relations
Commission