

P.E.R.C. NO. 2017-12

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

In the Matter of

VINCENT MCLEOD,

Charging Party/ Appellant,

-and-

OAL Dkt. No. CSR 00222-16
Agency Dkt. No. 2016-1999
PERC Dkt. No. CI-2016-034

NEW JERSEY DEPARTMENT OF
CORRECTIONS NORTHERN STATE PRISON,

Respondent.

SYNOPSIS

The Chair of the Public Employment Relations Commission (PERC) and Chairperson of the Civil Service Commission (CSC) issue a joint order consolidating for hearing at the Office of Administrative Law an individual petition before the CSC and an unfair practice charge before PERC filed by the employee's majority representative, and finding 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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Respondent.

Appearances:

For the Charging Party/Appellant, David Heintjes, of
counsel

For the Respondent, Robert Lougy, Acting Attorney
General (Elizabeth Davies, of counsel)

DECISION

Appellant Vincent McLeod ("McLeod") filed an appeal with the Civil Service Commission ("CSC") from a determination of the State of New Jersey Department of Corrections, Northern State Prison ("State") to terminate his employment due to a violation of N.J.A.C. 4A:2-2.3a (6) (7) and (12) ("Major Discipline")^{1/} stemming from an allegation that he left his prisoner detail

^{1/} These provisions provide that the general causes for major discipline include conduct unbecoming an employee, neglect of duty, and other sufficient cause.

unsupervised and allowed them to be in possession of prohibited items.

On February 6, 2016, McLeod filed an unfair practice charge with the Public Employment Relations Commission ("PERC") alleging that the State violated the New Jersey Employer-Employee Relations Act, N.J.S.A. 34:13A-1 et seq., specifically N.J.S.A. 34:13A-5.4a (1) and (3)^{2/}, when it denied him union representation during the investigative interview that led to his discipline.

The CSC appeal was transmitted to the Office of Administrative Law ("OAL") for hearing before Imre Karaszegi, Jr., Administrative Law Judge. A Complaint was issued by PERC's Director of Unfair Practices on the unfair practice charge on May 13, 2016.

On May 26, 2016, the State requested that the CSC and PERC matters be consolidated. On July 18, ALJ Karaszegi issued an Order of Consolidation and Predominant Interest, consolidating the CSC and PERC matters, and giving the CSC the predominant interest.

^{2/} 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."

After independently evaluating the record and the ALJ's Order, the Chair of the CSC, acting pursuant to his authority under N.J.A.C. 4A:1-3.2(b)3 and the Chair of PERC, acting pursuant to the authority delegated to her by the full Commission, have determined to modify the ALJ's Order regarding his predominant interest determination.^{3/} Consistent with our approach in similar cases, PERC shall have the predominant interest since PERC's unfair practice jurisdiction is exclusive. The case should be processed in accordance with the following:

JOINT ORDER

The ALJ will 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 the State violated N.J.S.A. 34:13A-5.4a (1) and (3) ; and PERC's decision and the complete record will then be sent to the CSC which will determine whether McLeod violated N.J.A.C. 4A:2-2.3a (6), (7) and (12); and

^{3/} There is no modification of the ALJ's Order that the matters shall be consolidated.

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

CIVIL SERVICE COMMISSION

RMCzech

Robert M. Czech
Chairperson/C.E.O.

Date: 8/23/16

PUBLIC EMPLOYMENT RELATIONS
COMMISSION

P. Kelly Hatfield
P. Kelly Hatfield
Chair

Date: 8/16/16