

P.E.R.C. NO. 2017-27

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 Public Employment Relations Commission, pursuant to N.J.A.C. 1:1-19.1 and N.J.A.C. 19:14-1.5(c), approves the withdrawal of McLeod's unfair practice charge and transfers this matter to the Civil Service Commission for consideration of the parties' settlement agreement.

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, Law Office of David
J. Heintjes (David J. 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."

However, in P.E.R.C. No. 2017-12, 43 NJPER 99 (¶30 2016) 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, issued a Joint Order modifying the predominant interest determination. The Joint Order provided that PERC had the predominant interest.

Following the Joint Order the case was returned to ALJ Karaszegi for hearing. After a hearing, on September 29, 2016, the ALJ issued an Initial Decision on the merits. However, after both parties filed exceptions, on October 23, they entered into a settlement agreement disposing of all charges pending before the CSC and the unfair practice complaint before PERC. The details of the agreement are memorialized in a document, signed by the parties, attached to this decision. The Settlement Agreement provides, inter alia: (1) the charging party withdraws the pending unfair practice with prejudice; and (2) that the Settlement Agreement will become effective only with the approval of the CSC, and absent such approval, either party may pursue the matter further.

Pursuant to N.J.A.C. 1:1-19.1, and N.J.A.C. 19:14-1.5(c), the withdrawal of the unfair practice charge is approved and this

case is transferred to the CSC for consideration of the Settlement Agreement.^{3/}

ORDER

A. The Settlement Agreement providing for the withdrawal of CI-2016-034 is hereby approved. Such withdrawal shall be without prejudice pending approval of the Settlement Agreement by the Civil Service Commission. If the Settlement Agreement is approved by the Civil Service Commission, the withdrawal will be with prejudice.

B. The Settlement Agreement is hereby transferred to the Civil Service Commission for its consideration.

BY ORDER OF THE COMMISSION

Chair Hatfield, Commissioners Bonanni, Boudreau and Eskilson voted in favor of this decision. None opposed. Commissioners Jones, Voos and Wall were not present.

ISSUED: November 17, 2016

Trenton, New Jersey

^{3/} Under N.J.A.C. 19:14-1.5(c), a withdrawal or dismissal will be without prejudice unless otherwise ordered. We will provide that if the settlement agreement is approved by the CSC, the withdrawal will be with prejudice.