

P.E.R.C. NO. 88-112

STATE OF NEW JERSEY  
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

ESSEX COUNTY SHERIFF'S DEPARTMENT,

Respondent,

-and-

PERC Docket No. CI-86-26-133  
OAL Docket Nos. CSV-00113-86  
& PRC-04494-86

WILLIAM DENVER,

Charging Party.

SYNOPSIS

The Public Employment Relations Commission denies the Essex County Sheriff's Department and William Denver's motion to reconsider P.E.R.C. No. 88-75, 14 NJPER \_\_\_\_ (¶ \_\_\_\_ 1988).

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Appearances:

For the Respondent, H. Curtis Meanor, Acting County Counsel  
(Audrey B. Little, Assistant County Counsel)

For the Charging Party, William Denver, pro se

DECISION AND ORDER ON  
MOTIONS FOR RECONSIDERATION

The County of Essex and William Denver have moved for reconsideration of our decision in P.E.R.C. No. 88-75, 14 NJPER 185 (¶19071 1988). In that decision, we found that the County violated subsection 5.4(a)(3) of the New Jersey Employer-Employee Relations Act, N.J.S.A. 34:13A-1 et seq., when it transferred Denver in retaliation for his protected activity. Although we found the County's action did not compel Denver to resign,<sup>1/</sup> we ordered the County to offer Denver reemployment, when available, in an atmosphere free of discrimination or retaliation.

Denver seeks reconsideration of the decision not to award reinstatement with back pay. The County claims Denver is not

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1/ We did not find a constructive discharge.

qualified for employment due to his lack of a valid driver's license, his driving record and his erratic behavior.

The County argues that one of the requirements for a Sheriff's Officer is the possession of a valid New Jersey driver's license. It has submitted a New Jersey Department of Personnel Class Specification. That specification requires that:

Appointees will be required to possess a driver's license in New Jersey only if the operation of a vehicle, rather than employee mobility, is necessary to perform the essential duties of the position.

County personnel officer Donald R. Brown has submitted an affidavit which claims:

With the exception of the courts division, the operation of motor vehicles is required on a routine basis in all of the aforementioned divisions. However, since the position of sheriff's officer is interchangeable between divisions dependent on manpower needs and assignments a valid driver's license is required.

The County further claims that Denver's driving record is poor enough to exclude him from hire, that while a Sheriff's Officer he engaged in conduct unbecoming an officer and then deliberately hid the fact from the Department, and that Denver should be required to undergo the same psychiatric analysis that new recruits undergo. Finally, the County asks us to reconsider and find no unfair practice because Denver's testimony was not credible or that the County be permitted to hold Denver to the same standards for employment that a new hire would have to meet and if not, allow appropriate disciplinary action regarding his drunken driving record.

Since the issuance of our decision, the Merit System Board, on March 29, 1988, has accepted and adopted the ALJ's findings and

conclusion concerning Denver's resignation, found no basis to disturb our determination concerning the unfair practice charge, and dismissed Denver's appeal.

On April 22, 1988, the County supplemented its motion. It reiterates that it is not required to rehire Denver if he is not qualified and argues even if he were qualified, N.J.A.C. 4:1-16.13(a) prohibits rehiring more than two years after resignation.

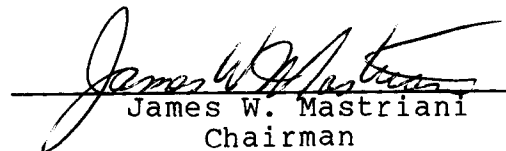
Having reviewed each party's submissions, we deny each motion to reconsider the merits of the unfair practice charge. Neither party has established the requisite extraordinary circumstances for granting such review. N.J.A.C. 19:14-8.4.

The sole remaining issue is whether the County must place Denver on a reemployment list in light of the County's claim that he is no longer qualified. We do not decide this issue because under all of these circumstances, the County's obligations are governed by the statute and regulations administered by the Department of Personnel.

ORDER

The Motions for Reconsideration are denied.

BY ORDER OF THE COMMISSION

  
James W. Mastriani  
Chairman

Chairman Mastriani, Commissioners Bertolino, Johnson, Reid, Smith and Wenzler voted in favor of this decision. None opposed.

DATED: Trenton, New Jersey  
April 27, 1988  
ISSUED: April 28, 1988